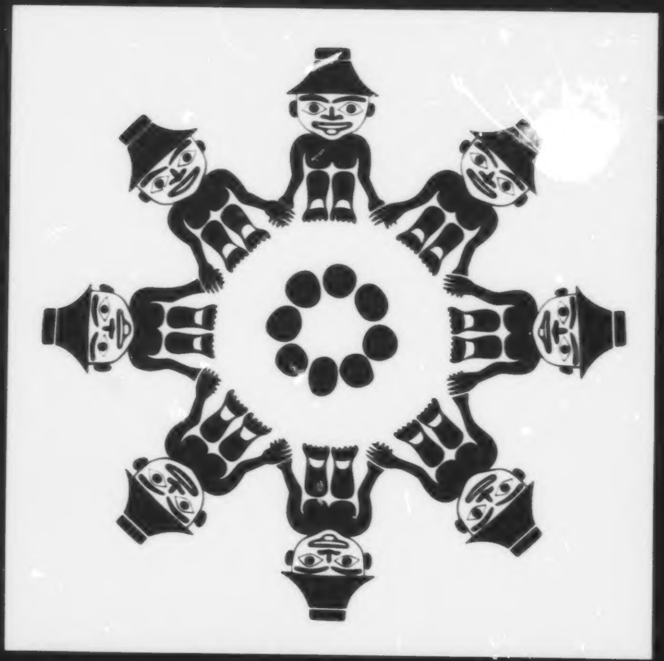

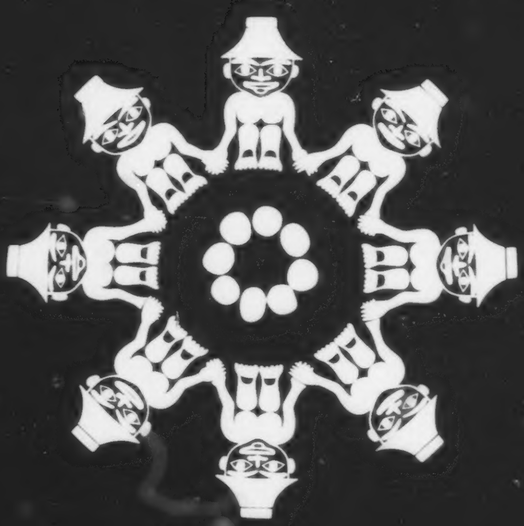

Sacred Circle

The Sacred Circle was originally designed for the drum of my eldest daughter, Kerri Lynne, to commemorate her first potlatch in Skidegate in 1991. The motif depicts children with lit faces joined in unity around a circle of stones.

The children are our hope for the future. Their strength will keep the fire burning.

Beau Dick

Benjamin K. (Beau) Dick

Born in Alert Bay, B.C. in 1955, Beau Dick was trained by his father and grandfather, who are well known artists in the Kwakiutl culture. He also studied traditional design and carving techniques with Doug Cranmer and Henry Hunt. Working with leather, wood and bone, Beau's carvings, paintings and silkscreen prints have been exhibited in the Vancouver Museum, the Vancouver Art Gallery, the Edinburgh festival and the Museum of Anthropology at the University of British Columbia.

Liberating Our Children

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Liberating Our Nations

Report of the
Aboriginal Committee

Community Panel
Family and Children's Services
Legislation Review in
British Columbia

October 1992

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Liberating Our Children • Liberating Our Nations

Report of the Aboriginal Committee

Community Panel
Family and Children's Services Legislation Review in British Columbia

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The Honourable Joan Smallwood
Minister of Social Services
Parliament Buildings
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V8V 1X4

Dear Ms. Smallwood:

The process of consultations that led to the preparation of this report has been one of pain and suffering. The negative effects of provincial child protection legislation has been so pervasive that it has affected virtually every one of our families. As we travelled the province we continually encountered heart wrenching stories of families being separated, and the tragic aftermath of those separations. We therefore submit this report to you with hope and anticipation that your government will support the recommendations we have made in order to begin the process of rectifying the type of situations we encountered.

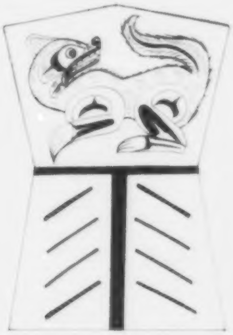
In preparing this report, we have spent some time identifying the sources of the problems that our families face. Our purpose in doing so was not to allocate blame, but rather to ground tomorrow's solutions in yesterday's past. Regardless of the reasons for the present problems we face, the solutions can only be found by our Nations and communities accepting these problems as theirs, and your government recognizing that the method of resolving these problems must be ours. Your government must relinquish responsibility for resolving our problems, and support our Nations and communities as they identify and implement their own solutions.

This is the report of the Aboriginal Committee of the Community Panel appointed to review family and child protection legislation. This report was compiled on the basis of extensive consultation with our Nations and communities. We drew our recommendations from the input we received, and we believe that there is a large consensus supporting these recommendations. We should caution, however, that we have not been appointed as spokespersons for the First Nations in British Columbia, nor do we pretend to that role. Our Nations have been struggling for the past century and a half to maintain their autonomy and integrity, and they are not now prepared to relinquish their rights to address government directly on a Nation to Nation basis. We can only hope, therefore, that our report will assist in focusing discussions. We do not see our report as finalizing a discussion on the jurisdiction for, and the provision of, services to Aboriginal families and children. Rather we see our report as the beginning of those discussions.

We would like to take this opportunity to acknowledge the support of the non-Aboriginal members of the Community Panel in recognizing the need for a separate process for the development of our report. The other Panel members, your office, and the staff of your Ministry, all allowed this process to unfold in a manner that made possible an Aboriginal process by which our people could address our issues in our own distinct manner. This may well be an historic event, possibly being the first time that such a consultation process has been initiated and carried out without ongoing attempts to influence the outcome by non-Aboriginal people.

Our children are our future. We submit this report to you with the confidence and the expectation that your government will support our Nations and our communities as they undertake their responsibility in rebuilding the strengths that served our ancestors so well.

Yours sincerely,



Stewart Jacobs

Lavina White

Lavina White

Tthow Legwelth
Haida Nation

Eva Jacobs

Eva Jacobs

tlakwakse
Kwakiutl Nation

Disclaimer

In the beginning of time, the Creator placed our people on the land on the northwest part of this continent. Our ancestors, up to the present generation, have lived here. We breathe the same air as the plants and animals that share this land. Upon our deaths, our bodies become part of the plants and animals of this land, just as they give of themselves to us; they become part of us, and so the cycle of life continues. The plants and animals are one with us. The very earth we walk on contains the bones and the dust of our ancestors. Thus the spirit of our ancestors is forever present. There is no place else where we could belong.

Before your European ancestors came to our land, we, as Nations, governed our own affairs and our laws served us well. We lived in harmony with Nature and with each other. We knew that Man and Nature were one.

Our laws were not like your laws, enforced by police and jails, but were based upon mutual agreements and a code of honour, which in turn were based upon our highest laws, the Laws of Respect and Consent.

When your ancestors came to our land we extended the same respect to them that we extended to each other. We expected them to extend the same respect to our Nations.

Your captains and princes promised to respect our laws. They told us of a proclamation from your king that guaranteed that respect. They told us how this proclamation acknowledged our right to live unmolested and undisturbed in our lands, and how your king would commit his armies to remove trespassers from our lands. No one could move onto our lands without our consent.

When your ancestors violated that respect, we were told that they were criminals, and that your governments would correct the wrongs done by them. We have since come to learn that it was your governments that were, in fact, the criminals. It was your governments who were breaking your own laws in extending their jurisdiction into our land.

We have been asked to review your child protection legislation and recommend changes as it affects our people. In doing so, we are put in a contradictory position, since we do not believe that your laws apply to our people. We believe that the Royal Proclamation of 1763 provides a constitutional basis for your laws and recognizes our right to live under our laws. We believe that right is recognized in your *Canada Act 1982* as one of the existing rights of Aboriginal people.

Unfortunately, your governments and your courts have not enforced those laws. They have enforced the extension of your law onto our land and applied them to our people with devastating effects. This has been particularly true of your child protection laws.

Your child protection laws have devastated our cultures and our family life. This must come to an end.

As a result, we are prepared to lay out a process by which, through your laws, you can move towards righting the wrongs your laws have inflicted upon our people. In doing so, you must realize that we make these recommendations without prejudice, and our words should not be interpreted as an acknowledgement of the legitimacy of the extension of your laws onto our Nations.

Your present laws empower your Superintendent of Child and Family Service and your family courts to remove our children from our Nations, and place them in the care and custody of others. The first step to righting the wrongs done to us is to limit the authority to interfere in the lives of our families, and to provide remedies other than the removal of our children from our Nations. This must be accompanied by the financial resources we require to heal the wounds inflicted upon us. At the same time, the responsibilities and jurisdictions vested in your Superintendent and the family courts must be vested in our Nations. Finally, as our Nations assert our own family laws to meet our contemporary needs, as we rebuild the authority usurped from our Nations, the laws of our Nations must have paramountcy over your laws as they apply to our people.

Preface

The terms of reference for our appointment to the Community Panel were established as follows:

The purpose of the child protection legislation review:

1. To ensure that legislation relating to the protection of children serves the best interests of all children and their families.
2. To enable the public to engage in a broad discussion about the role of child welfare services in a rapidly changing society.
3. To inform the public about child protection issues in B.C.
4. To ensure that legislation relating to Aboriginal children and families does not create or perpetuate impediments to Aboriginal communities assuming responsibility for their children and families in accordance with the aspirations of those communities.

The Community Panel was made up of ten people, including the two of us. We were of the opinion that the fourth goal of the terms of reference could not be achieved unless the Aboriginal Nations and communities of British Columbia had an opportunity to address the issues in a process that would ensure those issues were not lost in the concerns and issues of the remainder of the population of British Columbia. As a result, a parallel process was developed in which we undertook consultations directly with the Aboriginal population with those consultations forming the basis for this report.

We decided to arrange for 33 public meetings and additional private meetings in a variety of locations throughout British Columbia. In selecting the locations, we attempted to hold at least one meeting in a central location within the territory of each of the First Nations of British Columbia. While scheduling did not make this completely possible, it was our desire to ensure that every Aboriginal person who wished to meet with our panel would have the opportunity to do so.

The meetings were held in the following locations:

Prince George
Kamloops
Masset
Kitimaat
Bella Coola
Campbell River
Victoria
Dease Lake
Dawson Creek
Williams Lake
Penticton
Skidegate
Terrace
Fort Rupert
Port Alberni
Sechelt
Lower Post
Lillooet
Chilliwack
Cranbrook
Hazelton
Port Hardy
Powell River
Vancouver
Fort Nelson
Merritt
Hope
Prince Rupert
Bella Bella
Alert Bay
Chemainus
Surrey
Fort St. John

The public meetings that we held provided an opportunity for formal presentations, either written or verbal, as well as for informal discussions that provided all of the participants at the meetings an opportunity to express their opinions on these issues.

We would like to acknowledge the participation of so many people from around the province. A list of all of the participants who registered at our meetings is provided in Appendix 2. We also acknowledge the thought and hard work that went into the formal submissions that we received. A list of those submissions is included in Appendix 3.

This consultation process was a process of pain, as many people had to recount very personal and moving tragedies to fully describe the impact of child protection legislation on their families and their communities. We very much appreciate the courage those people showed in sharing their experiences with us in order that we could fully appreciate the experiences that helped formulate their opinions. We have selected a very small sample of these experiences for inclusion in this report in order to more fully clarify the need for recommended change.

After completing a draft of the recommendations that came forth from our consultation meetings, we held a series of four regional conferences at the following locations:

Prince George	North Vancouver
Vernon	Prince Rupert

The purpose of these conferences was to receive feedback to ensure that the recommendations reflected the aspirations expressed at the initial consultation meetings.

In travelling the province, many themes repeated themselves from community to community. Everywhere we travelled there was a recognition of the damage done to our families and communities by the residential school system and the apprehension and removal of children from their communities. Everywhere we went we heard of culturally inappropriate responses to the problems caused by these tragedies, and nowhere did we find Aboriginal communities with sufficient resources to address these problems.

The issues of the well-being of families and children is of major importance in our Nations and communities. The stories and concerns related to us are but a very small sample of a real determination by Aboriginal Nations and communities to exercise their responsibility to find resolutions that will enable our children to live a fuller and richer life.

We selected quotes directly from the presentations we received. Most quotes reflect ideas that were repeated in many other submissions. Our selection of specific quotes over others only reflects the clarity in which the idea was expressed and the physical parameters of placing the quote in the appropriate section of the report.

Because of the extensive concerns about the importance of this issue and the government's response to this report, we received many contradicting views with respect to the best method of presenting the conclusions. In attempting to accomodate all of those views, we have probably satisfied none. But ours is not the last word on this subject. That will come from our individual Nations as they define and redefine their relationship with Canada and with each other.

In carrying out this review, the Ministry contracted with the Native Courtworkers and Counselling Association to assist in obtaining meeting places and assisting in the travel arrangements for the participants. We would like to acknowledge their contribution in this area, along with the very thoughful input they provided to many of the consultation sessions.

In compiling this report, we would like to acknowledge the technical assistance of the staff of the Family and Children's Services Division of the Ministry of Social Services, and particularly the assistance of Peggy Waters and Carla Cranna. We would like to acknowledge the assistance of T.D. Mock and Associates Inc. in preparing the document for publication and K.J. Lee and Associates Inc. for design. We also acknowledge the cooperation of our colleagues who comprised the remainder of the Community Panel and the Manager of the overall review process, Jeremy Berland. Finally, we must acknowledge the Minister, the Honourable Joan Smallwood for providing us the opportunity to carry out this review.

Lavina White
Haida Nation

Eva Jacobs
Kwakiutl Nation

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Mission Statement

We must harmonize man-made laws, legislations, policies and regulations with Laws of Nature to meet our obligations to our children our families, and our communities.

Usma Nuu-chah-nulth Family and Child Services

Introduction

The present British Columbia *Family and Child Service Act* is not a family and child services act at all. It is an act governing how children come into the care and custody of the Superintendent of Family and Child Service as wards of the Province of British Columbia, on either a temporary or permanent basis. These children are called children-in-care.

There are two methods by which a child becomes a ward of the Province: by a voluntary agreement with the parents, or on the basis of a court order. As of January 31, 1992, there were 6061 children-in-care in British Columbia. Of these, approximately 2673 came into care via voluntary agreements. These agreements generally come about through death, disability, impairment or imprisonment of parents, broken marriages or unplanned, single-parent pregnancies. They are closely connected to poverty, in that the surviving parent or extended family often do not have the financial means to care for the child.

Of the 2673 children-in-care as a result of voluntary agreements, approximately 362 (13.5%) are Aboriginal children. This represents 0.5% of all Aboriginal children in British Columbia. Approximately 0.29% of all non-Aboriginal children in British Columbia are children-in-care as a result of voluntary agreements. The relative economic poverty of Aboriginal people in relationship to the non-Aboriginal population probably accounts for most of the difference.

The same is not true for Aboriginal children-in-care on an involuntary basis.

Only 0.21% (or 1 in 500) of the non-Aboriginal children in British Columbia are wards of the Province as a result of court orders: 499 children out of 500 live in the care of their families. For the non-Aboriginal population, the remedies under the *Family and Child Service Act* are a last resort for children in need of protection. Despite this, the *Family and Child Service Act* has been widely criticized as giving too much arbitrary power to the Ministry of Social Services staff, through the delegated authority of the Superintendent, to intervene in family life. Therefore, this review has been commissioned.

The effects of the *Family and Child Service Act* on Aboriginal family life has been completely different. Our people make up less than 4% of the population of British Columbia, but of the 3393 children-in-care as a result of court orders under the *Family and Child Service Act*, 1751 of those children (51.6%) are Aboriginal. In British Columbia, 2.55% of all Aboriginal children (1 in 39) are wards of the Province as a result of court orders (1 in 33 if voluntary agreements are included).

The number of children-in-care is not a static number. Children move through the system, being returned to their families, adopted by strangers, or reaching an age of majority. Over the past five years there has been an average of 951.8 of our children per year coming into the care of the Superintendent. This does not include re-admissions. The rate of new admissions has remained constant. In 1991-92, 951 of our children became wards of the Superintendent. Over a single generation, an average of more than one out of every five Aboriginal children are becoming wards of the Superintendent.

For the 2115 of our children-in-care, the Ministry has approved 477 Aboriginal foster and group home placement facilities. For the remaining 1638 (77.45%) of these children, being a child-in-care means being removed from their Aboriginal Nation, community, culture, family and traditional supports.

In the early days of Canada's existence, provincial child welfare laws had little impact on Aboriginal life. Federal law dominated and, under the authority of the *Indian Act*, our children were systematically rounded up and shipped to residential schools. During the 1960s, public awareness of the brutal nature of this process forced the federal government to abandon the residential school system. Meanwhile, provincial family and children's services legislation had been extended to apply to Aboriginal people. In 1951, only 29 children of Aboriginal ancestry (less than 1% of the children-in-care) were in the care of the Province. By 1964 this had increased to 1466 status Indian children alone, making up 34.2% of all of the children-in-care. The numbers of our children in the care of the Superintendent constitutes a gross violation of the United Nations Convention on the Rights of the Child, and has negatively affected every facet of Aboriginal family life.

Liberating
Our Children
•
Liberating
Our Nations

First Nations Law: A Wholistic Approach to Extended Families

First Nations Law: A Wholistic Approach to Extended Families

Cultural Chauvinism

The prevalent feature of cultural chauvinism is the dominating culture's assumption that its cultural values are in fact the only reflection of human nature. From this perspective, the values of any other culture are not only ignored, but are seen to be abnormal and in need of correction. As a result, cultural chauvinism is the foundation for cultural genocide.

Cultural chauvinism has characterized the attitude of Europeans towards our cultures since the first contact. Because this attitude underlies all colonial and Canadian law and policy, the only possible result could have been the genocide of our culture. Unravelling this process is the first step towards correcting the problems it has created.

One of the difficulties of analyzing the effects of cultural chauvinism, however, is the use of the English language itself. Any language contains within it the concepts that reflect the cultural values of the Nation to whom the language belongs. To translate our cultural values into the English language, it is necessary to stretch and distort the cultural values of Aboriginal societies to fit the concepts reflected by English words.

"We believe that effective and appropriate services can only be provided when cultural differences are appreciated and accepted as integral to the helping process."

Hazelton Child and Youth Committee

First Nations

Our people have resided in what is now known as North America since time immemorial. We have resided on this side of the world in numerous Nations. Each Nation has its own unique traditions by which members relate to each other and to the environment they inhabited. Each also has its own distinct means of sustaining its existence from its environment, as well as its own distinct culture and traditions, which reflected its internal human relationships and the relationships between the people and their environment. We refer to our "Nations", however, the term "nation" is closely connected to the modern European concept of a state, and therefore implies power relationships and political institutions foreign to our Nations. "Nations", however, is the most appropriate term, because the decision-making structure and methods by which problems were resolved was sovereign to each Nation. The

"Each Nation, each tribe within their Nation, is unique. Your legislation can never be flexible enough to meet the unique needs of these Nations."

Northwest Band Social Workers Association

process was accountable only to the people who made up that Nation and to their Creator. Because our Nations were the first on this continent, the term "First Nations" best describes this reality.

Our languages did not contain the word nation. In most cases, the people of a First Nation referred to themselves in a word meaning the people. The language they spoke designated which people.

Since the beginning of time, our Nations have occupied distinct geographic parts of this continent. Anthropologists confirm that, at the time of contact, in the area now known as British Columbia, there were at least 30 distinct Aboriginal cultures. Each Nation had a particular geographic territory and exercised sovereignty over the resources of the land and sea within that territory. Our oral histories tell us that those geographic territories have enjoyed the same stable boundaries since the beginning of time.

Even European academics acknowledge the stability of our boundaries for the last 1500 years. There is also much evidence of our footsteps on these territories well before this. One of many examples is the recent carbon datings of the Hatzic Rock at Chilliwack, and its connection to the Sto:Lo Nation, confirming the existence of that Nation in that area for at least 9000 years. Such findings give a meaning to "time immemorial" unparalleled by European nations.

In most of our languages, the people refer to their territory in a word roughly translated as the land of the people. Again, the specific language indicated which land and which people.

"Breaking the Laws of Nature condemns some form of life to extinction in the chain of life."

Usma Nuu-chah-nulth
— *Family and Child Services*

The Highest Laws of Respect and Consent

While each of our Nations has its own unique culture, many cultural values are common to all the Nations living in what is now known as British Columbia. Our people lived in harmony with their environment, and received sustenance from it through fishing, hunting, trapping and gatherings. We share many cultural values common to a people who share that relationship with their environment. This is diametrically opposite to the cultural values shared by a people who derive their basic sustenance from their environment through agriculture. The agriculturally based society views Nature as something to be changed and manipulated to meet the needs of its people. Forests are replaced by meadows and crops. Animals are domesticated, owned and bred with the view of yielding the most beneficial results to meet human needs. Nature is something to be changed, altered and tailored to fulfil human desires.

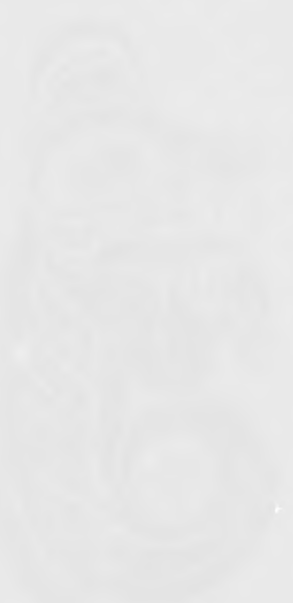
Our Nations, based on hunting, fishing and gathering, see Nature as a given, to be known, drawn from, and left unchanged, so that it can replenish the yield it provided to us. From the point of view of the agricultural society, Nature is something to be dominated. It is not coincidental that European Christianity starts from the concept that God gave Man dominion over plants and animals of the earth. From our point of view, Nature is something of which we are a part and must interact with, based upon the laws of Nature rather than upon the laws of Man. Ours is a spiritual relationship in which we are one with Nature.

From these different cultural perspectives comes also a view of human interaction in which, from the agricultural point of view, human nature (being part of Nature itself) is also something to be controlled and altered. It is not coincidental that European social sciences deal heavily in the concepts of behaviour change and behaviour management. These concepts are accepted as given in the development of family and child welfare laws and practices. To our culture, however, they are foreign.

Another common factor in Aboriginal culture is that decisions are made through a process of consensus. Our Nations were not governed by political institutions through which authority was forced upon people. We did not have police forces, internal armies, courts or jails to enforce leadership decisions amongst the people of our Nations. Our leaders led by exercising their leadership rather than by coercing a following. As a result, our Nations developed consensus on social responsibilities, and traditions for affirming that consensus. Social consensus is based upon a shared agreement of individuals to exercise a variety of responsibilities. Social status is enhanced through the exercise of those responsibilities and therefore continuously reinforced. Our laws are based upon consensus, and therefore are incorporated into the moral and ethical value systems of each individual. Because compliance with our laws is motivated by internalized acceptance rather than external coercion, they are much more binding on each individual. These attitudes extended into our families and our methods of teaching our children. Children are taught primarily by example, rather than being told abstractly what to do and what not to do.

The system of social responsibilities, reinforced by tradition and example, encourages individuals to accept responsibility. The system of political institutions that coerces acceptable behaviour denies people the opportunity to accept responsibility. Unless people have the opportunity to accept responsibility, decision-making based on consensus is not possible.

Our cultures are based on an oral tradition rather than a tradition of writing. Our histories, traditions and social consensus have



been passed from generation to generation through our oral tradition. This necessitated a cultural value in which events were described from a multitude of perspectives. Written tradition tends to encourage a process of describing events from one's own perspective and ignoring the perspectives of others. It is assumed that others will write their account of the event from their perspective. Through reading a variety of perspectives, a whole and complete view of the event will emerge.

Our oral tradition is compatible with decision-making based on consensus, since each individual is required to appreciate, consider and respect the viewpoint of all those involved. The written tradition, on the other hand, tends to lead to an adversarial method of decision-making that is foreign to our cultures.

While our people lived in stable Nations within our territories since the beginning of time, this does not mean that we were imprisoned by those national boundaries. Trade and travel between various Nations was extensive. Our people had detailed knowledge of the entire continents on our side of the world. In all of our languages there are names for this continent now known as North America. We had extensive knowledge of the size, diversity and geography of this continent and its surrounding waters.

Our people were able to travel and trade with both near and distant neighbours because of the relative stability and peace that existed amongst our Nations.

Peace and stability were the result of the respect we extended to the cultures, customs and traditions of our neighbours. Respect and consent were the universal basis of the laws of all our Nations. Travel and trade were only possible because, when entering the territory of another Nation, people respected the traditions of that Nation. The laws and traditions of the host Nation were adhered to by the traveller.

This same respect is a strongly reinforced value that characterized interactions within our Nations, whether these interactions are between various clans, villages, families or individual members of specific families.

Our people residing in the north west of this continent, in what is now known as British Columbia, enjoyed a very high level of prosperity. Nature's bounty provided well for all of our needs. In measuring the wealth of Nations, a common measure is the relative time the members of a Nation spend sustaining themselves, and the time they have available for developing arts and culture. Our arts and culture had reached a zenith of development prior to contact with Europeans. Our Nations were economically capable of setting

"We have had in the past, our own systems of child care and the whole spectrum of social interaction which encompassed the mind, body and soul of the whole community."

——— *Coldwater Indian Band*

aside the five months of winter for the development of our creative and social activities. Nature's bounty was sufficiently great that all of the needs of sustenance could be met during the late spring, summer and early fall months. The remainder of our time was spent on more aesthetic development. This level of prosperity is unparalleled in European history.

Sharing and Caring

Our existence on the North Coast prior to European contact was characterized by peace, stability and prosperity. This is not to suggest that we lived an idyllic existence. There were disharmonies, and problems did arise. As with all nations of this Earth, we sometimes warred with each other. In some years Nature's bounty failed to meet some of our needs. However, we had our own cultural traditions in place to deal with those problems and therefore minimize the disharmony. This extended to the areas of family and child relationships. Sometimes parents did die before their children reached an age of self-sufficiency, and sometimes families did have internal problems and marriage relationships broke down. But our Nations had methods of dealing with those problems and resolving them in a harmonious manner, which achieved the minimum possible negative effects on the development of our children.

Common amongst our cultures is a wholistic view of the universe. Our cultures do not categorize areas of problems and prescribe separate solutions. What today is described as child and family services is a category foreign to our cultures. On the other hand, the goal of the well-being of all members of our Nations has always been a strongly cherished cultural value. The health, care and development of our children is not a category that can be isolated from all other aspects of our life.

Central to all our cultures is an attitude that children are not a possession of parents. Rather, they are cherished by all because they are our future. Each member of a Nation has a responsibility for the well-being of all our children. Within that structure, specific responsibility is assumed by extended families and clans. Clanship varies amongst our Nations, but all share the common view that responsibility for the care of children is not limited solely to the parents. For example, in the Haida culture, grandparents teach the values, philosophy and principles of the culture. Aunts and uncles teach the practical skills of life. Because parents cannot always be objective about their children, the only method by which parents teach their children is by example. This sharing of responsibility for children is common to all our cultures.

"The Ktunaxa/Kinbasket Tribal Council subscribe to the philosophy of community wellness."

Ktunaxa/Kinbasket Tribal Council

"We, as First Nations communities, can care for our children. They are not a commodity . . . they are our future."

Northwest Band Social Workers Association

"Our main goals are to preserve and strengthen our culture; to support and maintain the extended family system; to promote the healthy growth and development of our children and to develop community based programs conducive to the realization of these goals."

Ktunaxa/Kinbasket Tribal Council

"Traditionally it was everyone's responsibility to protect our children because they were Usma, the most precious one, the cherished ones."

Usma Nuu-chah-nulth Family and Child Services

"This is, after all, an issue that affects the very future and survival of our Nations."

Louis Riel Metis Association

"...the care, protection and growth of our children is a paramount consideration because our children are our FUTURE."

——— ***Squamish Nation Council***

"For example, in the Gitksan Nation, a more appropriate understanding of 'family' would be a 'Wilp', or House. A Wilp is the decision-making unit of the Gitksan. It is headed by an Hereditary Chief who uses a model of consensus decision-making. It has often been viewed as 'extended family' by the dominant culture, although House members are not necessarily related by blood, and decision-making plays a broad societal role. Using an assumption of a Western nuclear family does not allow recognition of the responsibilities of House members for each other, and for the children. It is the Wilp that has the responsibility to ensure children are safe and well cared for."

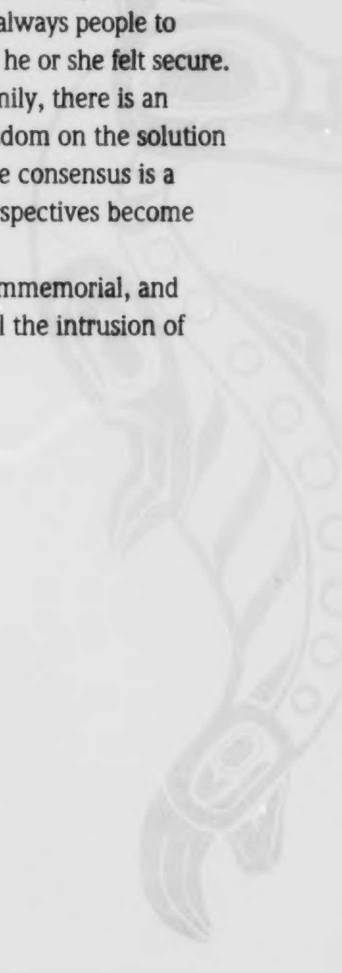
Hazelton Child and
——— ***Youth Committee***

This approach is compatible with the natural developmental needs of children. In the earlier years of childhood, children must learn the physical skills of which they are capable. These skills are best taught by those who are most active in the area of gathering and producing the means of sustenance for the community: the adult generation. As children move from childhood to adolescence they are more concerned with developing their identity, both as individuals and as members of a collective. For this to happen, adolescents must learn the cultural values that will determine the course of their lives. These values can best be taught by those people who have lived a major portion of their lives. This approach ensures that the children always have someone to turn to for guidance in all areas of their development.

Traditionally, the care of a child is the overall responsibility of an extended family, with members of that extended family playing various roles. In the event that any member of the family might be disabled or absent, there are many more people to take on their responsibilities. More importantly, it was never necessary to surrender children to the care of strangers. There were always people to whom the child was bonded and amongst whom he or she felt secure.

Likewise, when problems arise within a family, there is an extended structure that can gather and shed wisdom on the solution to that problem from many perspectives. Because consensus is a central value in decision-making, all of those perspectives become valid in searching for a solution to the problem.

This practice has been in place since time immemorial, and allowed our Nations to prosper in our lands until the intrusion of European law.



Liberating
Our Children
•
Liberating
Our Nations

Imposition of European Law

Imposition of European Law

Coercion versus Consensus

The coming of Europeans to North America was characterized by a clash between the European culture and Aboriginal culture. The cultural chauvinism of the Europeans resulted in tragic consequences for our people. History since that time has been one of colonization, oppression and genocide.

> **"The conflict over the rights of aboriginal people in British Columbia is not solely a product of our time. The dispute has its genesis in the early years of European settlement. It is a conflict that speaks to the difficulties in reconciling fundamentally different philosophical and cultural systems."**
>
> ***The Report of the British Columbia Claims Task Force***

At the time of contact, Europe was well into its transition into modern states, complete with political institutions and systems of state power. The development of these structures and the cultural values underlying them had been developed in the writings of early social theorists, such as Thomas Hobbes and John Locke. Their theories laid the justification for a system of power and authority. Both Hobbes and Locke justified the need for a state system of power over its citizens by constructing a hypothetical description of human existence without such a structure. This condition they described as a State of Nature.

In this "State of Nature" they described human nature as being characterized by greed and aggression. Therefore, they theorized that only a strong sovereign state, with the instruments necessary to exercise its political will, could keep these negative aspects of human nature in check. This view of human nature was supported by the European Christian formulation of the concept of the universality of original sin. The Hobbesian European view divided people into two classifications that were mutually exclusive: those people who had been brought under the civil control of the state and its structure of power and authority (the civilized); and those people who lived in a State of Nature, subjecting themselves and each other to their unrestrained human characteristics of greed and aggression (the uncivilized). Because Europeans knew no other system — and their social theorists suggested no other condition under which human society could exist — they failed to recognize the extensive social relations that existed within our Nations, which allowed us to live in peace, prosperity and stability. Instead, they saw a void. They felt obliged to save our people from ourselves by imposing a European structure of power and authority over our lives and a European Christian structure over our souls.

Along with other cultural assumptions, Europeans brought their own view of family life. This was a view in which valid marriage was only confirmed through Christian traditions and ceremony. Children were the property of parents. Nuclear families, made up of parents and their children, constituted the basic family relationship. Children were the property of parents under the authority of the husband and father. The English word "family" is derived from its Latin root "familia" meaning a household of slaves. This attitude ignored the whole complexity of roles and relationships that existed within extended Aboriginal families and clans, and the process of consensus upon which they were based.

"We are aware that the B.C. Government claims our country, like all other Indian territory in B.C.; but we deny their right to it. We never gave it or sold it to them. They certainly never got the title to the country from us, neither by agreement nor conquest, and none other than us could have any right to give them title."

Declaration of the Lillooet Tribe, —— 1910 (Drake-Terry, 1989)

Title to the Land

Europeans did not only bring cultural chauvinism to North America. They also brought concepts of land use and ownership that thinly veiled the most systematic theft of land in the history of human existence. Because Europeans had a view of Nature as a thing to be brought under human control, lands that were not so dominated were considered unused. Coupled with that view was the concept of private land ownership. Consequently, "undeveloped" land was unused land and unused land was unowned land. Based on this cultural justification, Europeans were to engage in, and condone, a violation of their own international laws regarding the relations between nations. They confiscated virtually all the territories of the Aboriginal Nations of North America. As they were later to change our names and the names of our children, they also changed the names of all our places: our rivers, our lakes, our mountains, our lands and our seas.

On arriving in North America, Europeans found a bountiful land inhabited by our people. Our philosophy is based on sharing and therefore we were prepared to share the wealth of our bounty with these newcomers. Because our philosophy demands us to respect each other's Nations, we automatically extended that respect to European Nations and their people. We incorrectly assumed that this same respect would be extended to our Nations and our territories. We never assumed that sharing our resources would be interpreted as surrendering our territory.

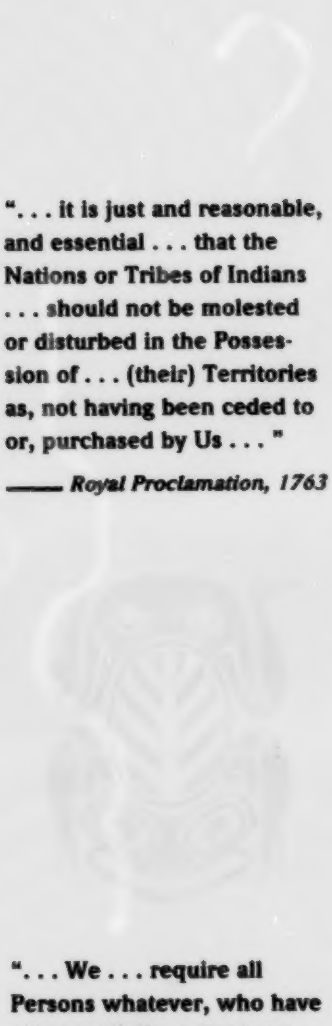
The contemplated relationship between First Nations and Europeans establishing themselves in North America is well depicted in the designs of the Two Row Wampum Belt. Rows of purple beads border the belt, divided by rows of white beads. The purple beads represent First Nations on one side and Europeans on the other. The white beads divide the two distinct peoples and prevent one from enforcing its customs, beliefs and systems upon the other.

Europeans' violations of this formal commitment, despite the many treaties and promises, are well documented. These violations eventually forced violent confrontations between First Nations and European settlers — confrontations that eventually resulted in a resistance in which the Ottawa, Potawatomi, Ojibway and Huron Nations united and drove the British garrisons out of all their forts west of Fort Pitt, culminating in the capture of the townsite of Detroit itself.

The English government realized its precarious position in North America, being vastly out-numbered by Aboriginal people. In response to this threat, it enacted a formalization of the relationships depicted by the Two Row Wampum Belt. In 1763, the English Crown issued a Proclamation that spelt out the relationship between Europeans and our Nations. In that document the English king recognized the First Nations of North America, and our right to be unmolested in our territories. It provided that the only way England, and her subjects, could come to claim title to lands in North America was through a process by which our Nations voluntarily consented. It also placed a trust relationship upon the English government to remove all European trespassers on unsurrendered land of First Nations.

". . . it is just and reasonable, and essential . . . that the Nations or Tribes of Indians . . . should not be molested or disturbed in the Possession of . . . (their) Territories as, not having been ceded to or, purchased by Us . . . "

—— *Royal Proclamation, 1763*



This same Proclamation also constituted all English colonial authority in North America acquired through the surrender of France, including Florida, Grenada and Canada. It was, therefore, the first piece of English constitutional law in Canada. As a constitutional document, it not only laid out rights and privileges, but it also put limitations on the extent of the authority of English colonial government. As it applies to unsurrendered Aboriginal land, it limited colonial governments to operating in the manner prescribed in the Proclamation. The Proclamation has never been repealed or superseded by other constitutional law. It exists today, and calls into question the jurisdiction of federal and provincial laws, and the authorities of their courts to enforce those laws in all unsurrendered land of First Nations.

". . . We . . . require all Persons whatever, who have either wilfully or inadvertently seated themselves upon . . . Lands, which not having been ceded to, or purchased by Us, are still reserved for Indians as aforesaid, forthwith to remove themselves . . . "

—— *Royal Proclamation, 1763*

In 1867, the British Parliament passed the *British North America Act* confederating the four English colonies into the Dominion of Canada, and providing a mechanism for Canada to extend its dominion over all the territory west to the Pacific Ocean. Our Nations were not part of this process, and without our consent Canada could not legally extend its dominion. As a result, the Canadian government entered into a treaty process with First Nations in an attempt to at least appear to comply with the Royal Proclamation regarding the sovereignty of Aboriginal land.

This treaty-signing process did not extend to most of British Columbia. In the early days of the Hudson's Bay Company's involvement on southern Vancouver Island, the governor at that time, Sir James Douglas, entered into a number of treaties with Aboriginal communities. In those treaties, small tracts of land were made available by Aboriginal people for use by the Hudson's Bay Company and later some settlement by Europeans. The treaty-signing process undertaken by the Canadian Government only extended into the land now known as British Columbia as far as to include the northeastern corner up to the summit of the Rocky Mountains.

The remainder of the land now known as British Columbia is not covered by treaty. As a result, all non-Aboriginal occupancy and claims to ownership violate the Royal Proclamation of 1763.

Despite the failure to comply with the provisions of the Royal Proclamation of 1763, the colonial administration of the Crown colony of British Columbia passed numerous laws and ordinances pertaining to land usage, ownership and occupancy in the unsurrendered portions of British Columbia. Since Confederation, subsequent governments have continually adopted the position that the passing of those laws and ordinances has somehow legalized a transfer of title in the land to non-Aboriginal people, and have extended the jurisdiction of non-Aboriginal governments and courts onto those lands. This proposition is being challenged by First Nations.

The End of Living and the Beginning of Surviving

"With the onset of Europeans came almost total annihilation, where . . . the Indian populations in this country were reduced by as much as 98% of their precontact levels."

——— *Coldwater Indian Band*

Europeans also brought with them diseases to which we had never been exposed and had not developed immunities. These diseases, especially smallpox, decimated the Aboriginal population of North America. Disease wiped out 98% of the Aboriginal population of what is now known as British Columbia. Vast gaps were left in the social fabric of Aboriginal life. Disease indiscriminately took leaders, healers, teachers, philosophers, parents, grandparents and children alike.

The confiscation of land left many Nations in the interior of British Columbia without the means of sustaining their existence. At the beginning of the 20th century, many of those Nations, denied access to the resources necessary for sustenance, were ravaged by starvation.

Government policy since Confederation continued to be characterized by cultural chauvinism, resulting in a multi-faceted campaign of cultural genocide aimed at the total assimilation of Aboriginal people into Canadian society. Federal laws were enacted, outlawing the traditional ceremonies that reinforced the structure of

First Nations government. Aboriginal people were prohibited by law from attempting to seek redress through the Canadian court system. It was even against the law for our people to gather to discuss these injustices or to hire lawyers to protect our lands against the illegal claims of trespassers.

The theft of our lands and resources had the obvious effect of totally undermining traditional Aboriginal economies. This was coupled with a policy of ensuring that our people could not compete with the emerging European economy. There are numerous examples of government policy that had the effect of handicapping individual Aboriginal people from competing, or even surviving, in the contemporary economy of British Columbia.

When the colonial government of British Columbia introduced its system of laws and ordinances, which allowed for the non-Aboriginal use of unsurrendered Aboriginal land, they used a process of pre-emption of land. This allowed any individual to stake a claim on land he intended to use for the purpose of economic development or settlement. Our people were denied, by law, the right to participate in the process of pre-emption. While small parcels of land were set aside and reserved for our peoples, in many cases the accompanying water rights were not reserved for our usage. Often the water was diverted from our lands, thus making it impossible for us to harvest food. Laws were introduced to prohibit our people from using motorized vessels in the fishing industry. The *Indian Act*, while purporting to protect our land, disqualified our people from obtaining commercial financing and mortgages. Mineral leases and forest leases were systematically denied to our peoples. Even our traditional traplines were systematically destroyed by the onslaught of non-Aboriginal industry. As a result, the doors to entrepreneurial involvement of our peoples in the economy of British Columbia were closed.

It has been well documented that the residential school system failed to provide our people with adequate or relevant preparation for employment. For example, Haida people from Haida Gwaii (Queen Charlotte Islands) were sent to residential schools as far away as Edmonton to learn agricultural pursuits. The geography of Haida Gwaii, however, is not conducive to agricultural activity.

The policy of the federal Department of Indian Affairs, limiting Aboriginal education to grade 8, prevented our people from competing in the managerial or professional categories of the economy. Furthermore, arbitrary qualifying education levels prohibited our people from competing in trades. For example, for entry into most building trades, apprenticeships required a grade 10 education.

The effect of these policies was to relegate our people to the fringes of economic existence in British Columbia. These discriminatory policies have resulted in an impoverishment of our people and extensive dependency on a system of welfare for our existence.

As a result of this impoverishment, our people have not been in a position to exercise even the most basic personal decisions enjoyed by the majority of Canadians. Without control of financial resources, we are denied control over our housing, our social and recreational services, our health care and other basic family needs. While many of these restrictions and prohibitions against our participation in the economy have now been removed, they have had the effect of creating several generations of welfare dependency, thereby entrenching role models of welfare dependency for the present generation of our people.

Cultural Genocide

The *British North America Act*, which constituted Canada as a country, divided existing colonial government responsibilities and authorities between the federal and provincial levels of government. Section 91.24 of the *British North America Act* gave the federal government exclusive jurisdiction to pass laws with respect to Indians and lands belonging to Indians. This section has been interpreted by British jurors as giving the federal government the exclusive jurisdiction to enforce the provisions of the Royal Proclamation of 1763. It transfers to the federal government the Crown's trust obligation to ensure that our people are not molested in our unsurrendered lands and that trespassers are removed from our lands.

Instead of protecting the guaranteed rights of Aboriginal people, Section 91.24 of the *British North America Act* was used by the federal government to pass an extensive piece of legislation called the *Indian Act*. This act, and its enforcement, has subsequently come to govern and control every aspect of the life of Aboriginal people.

Under the authority of the *Indian Act*, the federal government established a system of residential schools for our people and enforced attendance and residency in those schools. The government's goal in creating them was to separate our people from our culture, and to instill European cultural values in us. This was to be accomplished by creating the greatest possible separation between our children and their extended families, minimizing the opportunities of our cultural values being passed on to our children. For many victims of the residential school system, not only were cultural

"The federal government of the day saw Indians as a 'problem' and sought ways to eliminate its problem. The Federal document 'Canada's Plan to Liquidate the Indian Problem' written in the 1940s clearly outlined the objective to assimilate Indians into mainstream Canadian society."

——— *Squamish Nation Council*

"The survival of any distinct cultural group or society lies in its ability to perpetuate its existence, and this is basically done through the teachings of its youth in all that is vital to the social fabric of the community's life line."

——— *Coldwater Indian Band*

values lost, but the experience of normal family relationships and the natural process of parenting were lost as well. In their place was substituted an example of child care characterized by authoritarianism, often to the point of physical abuse, a lack of compassion, and, in many cases, sexual abuse. For those victims, the residential school system blurred natural limits on what normally would develop as mature love and sexual relationships.

The residential school process of assimilation also included the glorification of European cultural values and a demeaning of Aboriginal culture, history and existence. Children were encouraged to despise in themselves all those things which were essential to their identity. This process was extremely damaging to the self-image of the victims of the system. The residential school system spanned several generations, starting just before the beginning of the 20th century and extending until the late 1960s, when it was phased out.

In 1951, the federal government made a major revision to the *Indian Act*. Part of that revision was the inclusion of Section 88 of the *Indian Act*, which provides that, in the absence of federal law, provincial laws of a general application will apply to Indians. The federal government has never passed an Aboriginal family or child welfare act. As a result, provincial family and child protection legislation is deemed to apply to Indians. British Columbia child protection legislation enabled the Superintendent of Family and Child Service to apprehend children considered to be in need of protection, and allowed the courts to place those children in homes that were considered to be in "the best interests of the child". Prevalent social views in the 1950s and 1960s were that our children, facing the conditions of poverty forced upon our communities, needed protection. The lack of running water in an Aboriginal household was often sufficient excuse for the apprehension of a child. The attitudes of cultural chauvinism and assimilation continued to prevail. The "best interests of the child" was, and still is, interpreted as rescuing the children from their Aboriginal condition and placing them in a non-Aboriginal environment where they can learn the dominant cultural values. Huge sums of money are paid to non-Aboriginal people to foster our children. Our children are now the commodity basis for a new industry: the fostering of Aboriginal children.

The homes in which our children are placed range from those of caring, well-intentioned individuals, to places of slave labour and physical, emotional and sexual abuse.

The violent effects of the most negative of these homes are tragic for its victims. Even the best of these homes are not healthy

"The 1951 Indian Act Amendments brought into full operation the federal government's assimilationist policy. The three areas where policy was mainly implemented were in child protection, membership sections and the enfranchisement system."

——— *Squamish Nation Council*

"The centrepiece of the federal government's exercise of jurisdiction from 1867 to the 1950s and 60s was the residential school system. Generations of Indian families were negatively affected by this process of forced cultural/social genocide."

——— *Coldwater Indian Band*

"Abuse and violence resulted from colonization and through the imposition of residential schools."

——— *Saanich Indian School Board*

"It is the belief of this community that we must preserve and strengthen the Ktunaxa culture and identity of our people. A large part of that culture was an extended family system that was almost totally eradicated by the residential school system and the government's attempts to assimilate Indian people into the non-native culture and society. St. Mary's relies on this extended family system when dealing with child welfare issues."

——— *St. Mary's Indian Band*

places for our children. Anglo-Canadian foster parents are not culturally equipped to create an environment in which a positive Aboriginal self-image can develop. In most cases, our children are taught to demean those things about themselves that are Aboriginal. Meanwhile, they are expected to emulate normal child development by imitating the role model behaviour of their Anglo-Canadian foster or adoptive parents. The impossibility of emulating the genetic characteristics of their Caucasian caretakers results in an identity crisis unresolvable in this environment. In many cases this leads to behavioural problems, causing the alternative foster or adoption relationship to break down. The Aboriginal child simply cannot live up to the assimilationist expectations of the non-Aboriginal caretaker. As a result, many of these children are transferred from one home to another as each relationship breaks down. With each breakdown and subsequent transfer, the children experience a further feeling of rejection and a further damaging blow to their self-image. Each of these subsequent blows generally increases the frequency of acting-out or self-destructive behaviour.

The scope of the apprehension and foster placement of our children in the 1950s and 1960s was so extensive it is now known as the "60s Scoop". In 1955, 1% of the children in care of the Superintendent in British Columbia were Aboriginal children. By 1960, 40% of the children were Aboriginal. In some of our communities, every child was, at one point in his or her life, apprehended.

The Indian Act had many major devastating effects on the family life of our people. It defines who is entitled to be registered as an Indian and reside on an Indian reserve. When the process of registering Indians was undertaken, many people were left off the list and subsequently they, and their descendants, never became registered as Indians. Many Aboriginal babies did not have their births registered and so they also failed to become registered as Indians. Many First Nations straddle the Canadian-American border, both at the 49th parallel and the Alaska panhandle. Aboriginal children born outside Canada are not registered, even though many members of their family might be registered on the Canadian side. Aboriginal people, by moving to Canada from parts of the United States, are not eligible to be registered as Indians.

There were also provisions in the *Indian Act* by which our people could lose their rights as Indians. Prior to 1951, Aboriginal people registered under the provisions of the *Indian Act* were subject to numerous prohibitions and were denied many of their civil rights, including the right to vote. Many people were encouraged to give up their rights as Indians in order to exercise their civil rights.

"With greater focus around the world in the ideas and ideals of justice and human rights, came a different level of how to control Indian people in this country . . . The Government of Canada in its 'cover my ass' attitude with the governing bodies in the United Nations, perpetuated more injustices because the changes that were implemented did not take into consideration any account of the historical and contemporary injustices against Indian people."

——— ***Coldwater Indian Band***

"It is painfully obvious that the provincial government has failed dismally in previous attempts to fulfill its child protection role especially in regard to Native children."

Ktunaxa/Kinbasket
——— ***Tribal Council***

"How can strangers come into their home and take their children without ever having lived in their family."

Metis Council
——— ***of Port Alberni***

"There is something inherently wrong in a system that will pay 'strangers' more money to look after our children than they would allot to the Aboriginal family."

Louis Riel
——— ***Metis Association***

The Department of Indian Affairs only provided an education up to a maximum of grade 8 for Aboriginal children. The public schools denied access to Aboriginal children registered under the *Indian Act* and therefore children wishing to proceed with their education were forced to surrender their rights as Indians. Aboriginal people who left the reserve for a long period were arbitrarily removed from the list of registered Indians by the Indian Agent. As a result, most of the Aboriginal people who served in World War I or World War II lost their rights as Indians. The eligibility requirement to be registered as an Indian was dependent upon one's parents being registered, and therefore if a person lost or surrendered their rights, then their children were also ineligible to become registered as Indians.

The most devastating section of this legislation provided that an Aboriginal woman marrying a man who was not a registered Indian would lose her rights, and her children would be ineligible to be registered as Indians. That section was repealed in 1985 in the provisions of Bill C-31; however, much of its effects are still being felt even by those people who qualified for re-instatement. Bill C-31 does not extend to all the descendants of people who lost their rights through marriage. Re-instatement of Aboriginal people under Bill C-31 does not automatically result in those people being reinstated on Band lists and therefore requalified to live on lands reserved for Indians.

Being registered as an Indian encompasses many things. It arbitrarily defines membership in a Nation, and it determines eligibility for education, health care, and some other social programs extended by the federal government only to registered Indians. More importantly, however, registration defines access to residency on land reserved for Indians. The effects of laws that denied Aboriginal people their rights as Indians created numerous divisions within extended families. Grandparents, for example, might be registered and eligible to live on a reserve, while their children have lost their rights and are not eligible to reside on a reserve. Consequently, the grandchildren are not eligible to reside on a reserve, the grandparents are denied their traditional role in the care of the children, and the children are denied the opportunity of learning the teaching of their grandparents. The act even divided siblings into status and non-status Indians. As a result, aunts and uncles are not in a position to exercise their responsibility with respect to their brothers' and sisters' children. The *Indian Act* undermines the whole fabric of social responsibilities that had enabled First Nations to live in peace, stability and prosperity since time immemorial. The

"During the past few years, [we] have been very concerned about the number of children that have been apprehended and placed in non-Native homes . . . There have been broken family ties, loss of Native Indian culture, loss of Native language, and lack of self-esteem and respect."

Shackan-Nooaitch Administration

"Our children are not for sale at any price!"

Louis Riel Metis Association

" . . . little has been done to address the needs of children and families who do become entrenched within the child welfare system."

Cowichan Band

"Your methods of removing children from their families has created a lot of sorrow in communities, sorrows which will take generations to mend."

Metis Council of Port Alberni

"Native children continue to represent a disproportionately high number of the total children in care in British Columbia . . . largely the result of an overzealous Ministry of Social Services undermining the role of Native communities as protectors of their own children."

Ktunaxa/Kinbasket Tribal Council

act itself is the result of a culturally chauvinistic government, bent on a policy of the assimilation of our people.

The attempt at assimilation of Aboriginal people was unsuccessful. We continue to exist as a separate and distinct people. Our Nations, complete with our cultures and traditions, also continue to thrive despite the massive onslaught against us. However, while the effect of the government policy of assimilation has not resulted in assimilation, it has created a state of economic dependency.

The arbitrary effects of disease, starvation and impoverishment dealt a serious blow to the extended family traditions of some of our Nations. The gaps left by these catastrophes resulted in large holes in the network of supports and responsibilities previously available to the Aboriginal child and practised by family members.

The system of residential schools, followed by the years of apprehension and placement of our children in non-Aboriginal homes, resulted in large numbers of our children not being raised in situations where the traditional responsibilities could be passed down to them. In many cases we were also denied the opportunity to learn the basic parenting practices used by our people since the beginning of time. Since there was no nurturing in these schools it was very difficult for the children to develop the natural process of providing nurturing to their children. Our co-operative and supportive child care practices were replaced by authoritarian practices based on punishment and coercion taught and reinforced in the Anglo-Canadian residential schools and foster caretaking homes. Alcohol, drug, physical and sexual abuse are all effects and symptoms of the degree to which our extended family practices were undermined and damaged.

In response to the obvious social needs resulting from these experiences, government policy has used the dependency of our people to formulate European cultural approaches to dealing with these problems, based on treating the individual. Our traditional community-based approaches to resolving problems have been replaced by European medical models of treating individuals in isolation from their social environment. In most cases, this type of treatment has been unsuccessful in solving problems for us. The individual has been treated and returned to the dysfunctional social environment. The failures of this approach have been used to justify the continued apprehension of our children, thereby perpetuating a cycle of cultural confusion.

One of the most devastating measures of the effects of cultural genocide lies in the rate of suicide in a community. While Aborigi-

"The philosophy [was] designed to make White men out of Indians."

———— ***Coldwater Indian Band***

" . . . First Nations people through sheer will and perseverance have survived their own history of colonization and the pain associated with that."

———————— ***Cowichan Band***

nal suicide levels are much higher than average Canadian levels, a recent study demonstrated that Aboriginal suicide rates are not the same across all our Nations. There is a very high correlation between Aboriginal suicide and the extent to which traditional Aboriginal decision-making practices have been dismantled.

The Eagle Has Landed

Many of our Nations have prophecies that foretold the coming of our oppression at the hands of Europeans. They have also foretold our eventual liberation. Best known of these is the Hopi prophecy relating how our Nations will live under the oppression of Europeans for seven generations. The end of this oppression and the re-emergence of strong, liberated Aboriginal Nations will be signalled by "an eagle landing on the moon". The meaning of this prophecy went unknown for many years until 1969 when the American astronaut, Neil Armstrong, reported back to earth that "the Eagle has landed".

The 1951 revision of the *Indian Act* removed many of the most repressive elements of that act. It transformed the document from an instrument of repression to an instrument of paternalism. During the 1950s and 1960s it was no longer illegal for Aboriginal people to gather to discuss our grievances with Canada and pursue solutions to those grievances.

In 1970, the Nisga'a Tribal Council initiated legal action seeking a court declaration of their Aboriginal title to their traditional lands. The Supreme Court of Canada ruled unanimously that, based on the laws of Nature and on international law, the Nisga'a Nation had Aboriginal title to all of their traditional territory. Three of the seven judges declared that title continued to exist. Another three ruled that title had been extinguished by the colonial government of the colony of British Columbia. The seventh judge found a technicality for not ruling on the case.

By arriving at a split decision, the Court sent a message to government that Aboriginal title and jurisdiction had not been extinguished under Canadian law, while at the same time it found a political escape from providing the Nisga'as with a legal decision on which to enforce their title and jurisdiction. The Supreme Court avoided ruling on the applicability to contemporary British Columbia of the Royal Proclamation of 1763, finding other issues on which to base its judgements.

Since then, a Supreme Court decision initiated by the Musqueam Nation determined that Aboriginal title to Musqueam land did exist today and was not dependent on colonial, Canadian or provincial legislation for its existence.

More recently, in 1991, in a decision initiated by Ron Sparrow of the Musqueam Nation, the Supreme Court of Canada found that the specific rights of Aboriginal Nations continue to exist in Canadian law. In this particular case, the right to fish predates all legislation that purported to restrict that right, and the right is protected in the constitutional recognition of existing Aboriginal rights in the *Canada Act 1982.* The Court ruled that, even before the rights of Aboriginal people were affirmed in the *Canada Act 1982*, government could not arbitrarily and unilaterally extinguish rights of Aboriginal people. All of the laws that recognize the rights of our people to fish apply directly to the rights of Aboriginal Nations to protect and care for their children and families.

Nowhere in Canadian law is there an indication, or expression, extinguishing the rights of our Nations to exercise jurisdiction over the lives of our children and families.

Liberating
Our Children

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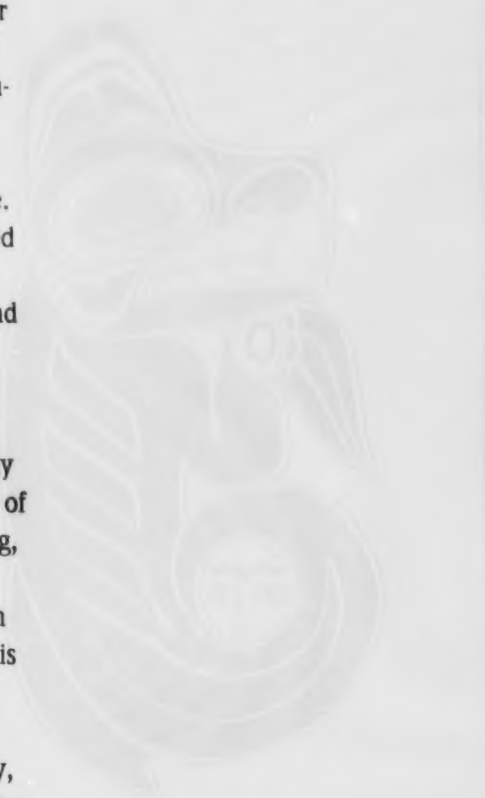
Liberating
Our Nations

Transition Back to Aboriginal/First Nations Law

Transition Back to Aboriginal/First Nations Law

Colonial Legislation and the Inherent Right to Self Government

The *Indian Act* provides a legislative framework for the federal Department of Indian Affairs to exercise colonial bureaucratic control over virtually all facets of Indian life. Its constitutional basis for exercising this power is derived from Section 91.24 of the *British North America Act*, which gives the federal government the exclusive right to pass legislation with respect to Indians and land reserved for Indians. Despite this extensive legislative power, the federal government has not passed legislation regulating family life. As a result, provincial laws of general application have been applied to all Aboriginal people. The application of this law reveals the unjust and colonial nature of the relationship between the state and First Nations.



Central to the well-being of family life is the stability of the matrimonial home, the place where family life exists. Within the context of Aboriginal families, the family home is more than simply a house or a piece of property. Given the restrictions on land size of Indian reserves, and the inadequate resources available for housing, the family home is the place in which an Aboriginal family is connected to the Nation that supports and nurtures its culture. Given the importance of extended family relationships, the family home is not only a place where a nuclear family resides and gathers, but is also the place where the extended family gathers.

To a much greater degree than in the Anglo-Canadian society, several generations of a family commonly occupy the same dwelling. Adult children often continue to live in the extended family dwelling long after becoming parents themselves. Adult brothers and sisters are often temporary or full-time occupants of an extended-family dwelling. This factor of our lifestyle is not simply a reflection of inadequate housing, but an extension of extended family responsibilities towards each other.

Reviewing how Canadian courts deal with the disposition of the family home when a family encounters problems provides an exposé of the colonial nature of the laws enforced upon First Nations. The Supreme Court of Canada, in a number of precedent-setting cases, has determined that disposition of an Aboriginal family home on the breakdown of a marriage is the exclusive jurisdiction of the federal government. As a result, provincial laws of general application do not apply.

Because of the unique nature of land reserved for Indians, Aboriginal people living on reserves do not hold title to their dwellings. In place of a title, the Department of Indian Affairs issues a Certificate of Possession. Based on the paternalistic attitude of European culture towards the ownership of the family property at the time of the writing of the *Indian Act*, the Certificate of Possession is generally issued to the husband. As a result, laws that would protect the rights of women and children in the family home, being provincial legislation, do not protect Aboriginal women and children living on an Indian reserve. When women have attempted to use the courts to protect their interests in the family home, the Supreme Court of Canada has ruled that provincial laws, which recognize the entire family's interest in the home, are not applicable to the spouse of the holder of a Certificate of Possession.

The effect of these decisions, given the limited land base and housing on Indian reserves, has generally meant that, in the event of a family breakdown, Aboriginal women and their children have been forced not only to leave the family home, but to leave the community that has nurtured their culture and provided the extended family relationships central to Aboriginal lifestyle. These decisions are applied regardless of questions of fault in a family breakdown. They are applied even in cases where women and children have been the victims of extensive family violence and abuse.

The colonial nature of Canadian law is exposed in the fact that, in all of the cases of this nature appealed to the Supreme Court of Canada, the Court has not even been prepared to look at the injustice of these situations. Instead, the Court has dealt only with the jurisdiction issue and ruled against the women because there is no protection for them in federal law.

Some well-meaning non-Aboriginal people might argue that the solution to this problem is the extension of federal law in the area of regulating family relationships, as if the federal *Indian Act* did not already sufficiently bureaucratically regulate the lives of our people.

The colonial nature of this system is also revealed in the different concepts of social organization between European and Aboriginal society. European society is based upon principles of equal rights of individuals. Our custom is based on a tradition of ensuring the rights of women and children by vesting the family property in the hands of the women. In most of our cultures, women did not hold a position equal to men, but a superior position with respect to the ownership of matrimonial property. As a result, under Aboriginal dispute resolution tradition, the women's and children's security was automatically protected in the recognition of the woman's claim to the family home.

Anglo-Canadian law views the family home as a piece of property to be divided equally. If sold, the proceeds are divided between both partners in the marriage. If not sold, the partner receiving the home pays a compensation to the other partner. Given the inadequacy of housing in an Aboriginal community, and the lack of an economic base in our communities, this solution simply does not fit. As a result, our women and children are forced to endure whatever treatment is handed them or to desert their home, community and Nation. The Canadian legal system is not even capable of addressing this injustice, let alone correcting it.

Many people have recommended to us that, in the event of a child being in need of protection, the source of the problem, not the child, should be removed from the home. Given the present state of Aboriginal child protection legislation, this is not a possibility that could be enforced.

This injustice has devalued Aboriginal lifestyles and areas of social responsibility. In traditional Aboriginal families, the place of women and children was guaranteed and adult males were seen as providers for the needs of women, children and elders. They accepted that responsibility. Now the entire basis for that responsibility has been eroded. Because of the economic oppression of our people, those males who would undertake the responsibilities to provide for women, children and elders are not in a position to do so economically. Those who are in an economic position to do so are not so required by law. The traditions by which First Nations lived in peace and prosperity since time immemorial are undermined by the imposition of colonial paternalism.

The answers to these problems cannot lie in the further extension of bureaucratic regulation of Aboriginal life. Arguments over the constitutional division of powers between the federal and provincial governments result only in a question of which level of government has the right to regulate Aboriginal life. This question does not address the basic issue of justice, which would recognize the rights of our people to take responsibility for our own lives. That answer can only be framed in the inherent right of our people to govern ourselves.

"We are here to express our recommendations as interim measures . . . and our ultimate goal of Indian self-government."

Northwest Band Social Workers Association

We recommend that:

1. All legislative changes regarding Aboriginal family life must be developed in the context of strengthening the right of Aboriginal people to exercise our inherent right to self-government.

In the land now known as British Columbia, our Nations have never surrendered the right to govern ourselves. Even in areas where treaties have been executed, purporting to surrender Aboriginal land, it was never the intention of the Aboriginal people involved to surrender their right to self-government. None of the treaties suggests such a surrender, either implicitly or explicitly. Conversely, the concept depicted in the Two Row Wampum Belt of parallel, equal, self-governing Nations was the anticipated relationship.

"In the case of our own children we . . . subscribe to the fact that the parents of our children and other members of the communities in which our children live must be at liberty to decide the manner in which these rights will be enforced."

Ktunaxa/Kinbasket Tribal Council

The present government of British Columbia has acknowledged the inherent right of Aboriginal people to self-government. This has also been acknowledged by the Canadian government in the present round of constitutional discussions. Both governments have committed themselves to working towards a recognition of the inherent right of our people to self-government in the contemplated revisions to the Canadian constitution. In the long run, recognition of our inherent right to self-government and the paramountcy of our family law provide the only legal framework for dealing with the protection and strengthening of our families and children.

"There is no doubt in my mind that the system has to change completely. I know that Native people must have control over their own child care for any real fundamental change to occur."

Indian Homemakers' Association of B.C.

We recommend that:

2. Changes to family and child protection legislation must be seen only as an interim measure that will be fully resolved through the recognition of the paramountcy of Aboriginal family law.

In court challenges by Aboriginal Nations to exercise our jurisdiction, both federal and provincial governments have relied on arguments that, by complying with existing federal and provincial law, Aboriginal Nations and individuals have tacitly surrendered the right to self-government. They have argued that by applying for permits and licences, or by accepting federal or provincial funding, we have passively accepted federal and provincial jurisdiction. Without dwelling on the fact that consent extracted through coercion is not consent at all, the present process to improve family and child legislation must ensure that it does not create further impediments to our right to self-government.

"The expeditious return of the responsibility for the welfare of our children must be the only goal to consider when revising the Family and Child Service Act . . . "

Ktunaxa/Kinbasket Tribal Council

We recommend that:

3. All legislation and agreements dealing with Aboriginal family and child legislation, policy and practice must include explicit statements guaranteeing that the intent of the legislation and/or agreements does not abrogate or derogate from existing Aboriginal rights, or rights that might in the future receive constitutional protection.

The present exclusive jurisdiction of the federal government under Section 91.24 of the *British North America Act*, to legislate with respect to Indians and land reserved for Indians, does not prevent provincial legislation from providing beneficial legislative reform for our people. Section 15 of the Canadian Charter of Rights and Freedoms ensures that individuals in a province are not deprived of the equal benefit of provincial law. Section 35 of the *Canada Act 1982* affirms the rights of our people, and thereby acknowledges that Aboriginal people have rights both collectively and individually. The inclusion of the acknowledgment of those rights also recognizes a (fiduciary) trust obligation of the Crown towards our people. In this light, Section 91.24 of the *British North America Act*, giving the federal government exclusive jurisdiction to legislate with respect to Indians and lands reserved for Indians, no longer permits the federal government to enact any legislation that it sees fit. Because the rights of our people are guaranteed both individually and collectively, Section 91.24 can only permit the federal government to exercise a (fiduciary) trust obligation by legislating for the positive benefit of our people and our Nations.

This (fiduciary) trust obligation, however, is binding both on the federal and provincial Crown, and therefore, to the extent that the provincial Crown has the right to enact legislation that affects Aboriginal people, it shares in the (fiduciary) trust responsibility. Despite the seemingly exclusive nature of Section 91.24, the provincial government is in fact free to introduce legislation with respect to the collective rights of our people, providing that that legislation is part of the (fiduciary) trust obligation of the provincial Crown and is for the benefit of our people.

We recommend that:

4. Provincial legislation must explicitly acknowledge the jurisdiction and responsibility of Aboriginal Nations to make decisions, and resolve problems with respect to issues of Aboriginal families and children.

"At the outset it must be clearly understood and accepted that the following input into the review process does not in any manner prejudice the Penticton Indian Band or any other First Nations Peoples' pursuit of their respective inherent jurisdiction over its peoples and territories."

——— *Penticton Indian Band*

"We seek to protect our right to freely determine how we solve our own problems, how to maintain, develop and protect our own culture, our own resources and our own way of life."

——— *Pacific Metis Federation*

"It has been our experience that the MSS does not have the cultural and community awareness; but it certainly has the power and authority to carry out its mandate. We feel that it would be more advantageous if that authority and responsibility be taken on by our communities . . . "

Nicola Valley
——— *Tribal Council*

Aboriginal Family and Children's Services

Because our Nations governed their affairs on the basis of consensual acceptance and responsibility, it is not possible to superimpose the European concept of constituencies on traditional Aboriginal Nations. In traditional Aboriginal life, individuals knew the Nation to which they belonged, and our Nations knew who their members were through extensive systems of family lineage. Various customs existed within different Nations to determine the nationality of individuals who migrated or married into other Nations, and the offspring of those individuals. Traditions and ceremonies existed to affirm the acceptance of each individual into a particular Nation.

Since colonial contact, there has been a major disruption of the citizenry of First Nations. The *Indian Act* has arbitrarily defined some people as Indians, and others not. The federal government has imposed a system of reserve lands, which in some cases conform to the traditional living arrangements of our communities, but in most cases do not. The *Indian Act* has created a structure of Band government that negates the organizational traditions of most First Nations. Economic oppression and government bureaucratic regulation of our people has forced migrations of people from their traditional communities. The Department of Indian Affairs' administrative system has divided up British Columbia into geographic areas for its own convenience, sometimes conforming to the traditional territories and sometimes not. Modern communications and transportation systems have altered the inter-community working relationships of many Aboriginal Nations. In spite of these many intrusions upon the traditions our Nations, the cultures, beliefs and traditions of our Nations remain intact. The last two decades have seen a major resurgence of organizational structures designed to reinforce the existence of the traditional relationships in our Nations. The existence of Aboriginal Nations, which in many cases were reduced to existing in the minds and hearts of their members, is in the process of re-emerging in organizational forms. The final rebuilding of our Nations will be more fully realized in the implementation of our inherent right to self-government. In the interim, our Nations must be self-defining, based on the principle of the right of a Nation to define its membership, and the process for appealing membership decisions must be internal to the Aboriginal Nation.

We recommend that:

5. Government must recognize the right of Aboriginal Nations to define their citizenship. In developing a structure to define citizenship, Aboriginal Nations must ensure an impartial process through which individuals who are denied citizenship are given a fair opportunity to appeal such decisions.

There are 30 Tribal Councils and 192 Bands in British Columbia. All but nine Bands are affiliated with a Tribal Council. There are approximately 85 000 Aboriginal people living in British Columbia who are registered as Indians under the provisions of the *Indian Act.* Approximately 50% of those people reside on land reserved for Indians. Of the other 50%, a large majority are members of one of the Bands. Some people, however, have regained their rights as Indians under the *Indian Act*, through the provisions of Bill C-31, but are not registered as Band members.

There are, at the very least, 50 000 Aboriginal people in British Columbia who are not registered as Indians under the *Indian Act.* Some of these people are in the process of becoming registered under the provisions of Bill C-31. Others do not qualify to be registered, since Bill C-31 only affected those people who lost their right as Indians through marriage. People who lost or were denied their rights as Indians under the *Indian Act* for any other reason do not qualify for reinstatement. The offspring of many of the people who lost their rights through marriage also do not qualify. Many of those people who are not registered as Indians under the *Indian Act* are closely associated with, and related to, communities of Aboriginal people who are registered as Indians. The remainder originate from Aboriginal Nations not indigenous to the land now known as British Columbia, or people who have been separated from their Nations through the residential school process, foster homes, or adoption by non-Aboriginal families.

Additionally, there are approximately 30 000 Aboriginal people in British Columbia who are a part of the Metis Nation. The Metis Nation developed as a distinct Nation of people during the 18th and 19th centuries on the Canadian prairies. The Metis Nation was centred in Manitoba and Saskatchewan, but extended west to the Rocky Mountains, including the northeast corner of present-day British Columbia. The Metis people did not enter into treaties with Canada and, as a result, the Canadian government did not reserve land for them. Consequently, in the absence of a land base, many

Metis migrated to British Columbia during the last century. The federal government does not recognize Metis people under the *Indian Act*, nor does it accept a trust obligation to the Metis under Section 91.24 of the *British North America Act*. The contemporary Metis population of British Columbia is concentrated in the southern portion of the area covered by Treaty 8, to which they are indigenous, in the Prince George area, and in the Lower Mainland. There are smaller concentrations of Metis in the urban centres of the Shuswap and Okanagan areas and southern Vancouver Island.

" . . . the conviction that once a Ktunaxa, always a Ktunaxa no matter where you may happen to live."

—— ***St. Mary's Indian Band***

"Family and child services to Squamish Nation families and children should be equal and accessible to all band members whether residing on or off reserve."

—— ***Squamish Nation Council***

We recommend that:

6. Governments must recognize the right of each Aboriginal Nation to extend its responsibilities for family and child services and decision-making to all members of that Nation, whether they are registered as Indians or not, and whether or not they reside on or off land reserved for Indians, in accordance with the aspirations of the Aboriginal people who comprise each Nation.

7. Governments must recognize the rights of Aboriginal communities that are enclaves in non-Aboriginal communities to assert their responsibilities for family and child services and decision-making in accordance with the aspirations of the Aboriginal people who comprise those communities.

8. Governments must acknowledge the right of each Aboriginal Nation or community to form its own child and family services agency.

9. The structure of those agencies shall be determined by the Aboriginal Nation or community involved, in accordance with the cultural, social and political needs of that Nation or community. Legislation must acknowledge the right of each Aboriginal Nation to act collectively as guardians for a child who is a member of that Nation.

10. An Aboriginal family shall be defined as any family in which at least one parent is of Aboriginal descent, and which generally associates itself with an Aboriginal Nation or community.

11. An Aboriginal child shall be defined as any child of an Aboriginal family.

In recent years, a number of our Nations have re-asserted their authority over the various aspects of decision-making in family and child services. This has been done through a variety of methods, but in all cases has involved the Ministry acknowledging the decision-making structure of the community, and entering into agreements that spelt out the various authorities of the community agency and the Ministry in their relationship to the administration of the *Family and Child Service Act.* In some communities, such as the Spallumcheen Band and the Nuu-chah-nulth Tribal Council, all of the decision-making vested in the Superintendent of Family and Child Service has been delegated to agencies established by those communities. The Carrier-Sekani Tribal Council and the MacLeod Lake Band have also entered into agreements, taking on major areas of decision-making with respect to the provision of family and child services. Some communities are in the process of establishing agencies that will take on these decision-making roles, and in other communities working agreements exist between the communities and the Ministry, spelling out areas of co-operation in the administration of the *Family and Child Service Act.* In yet other communities, the Ministry continues to operate unilaterally, with little or no involvement of the Aboriginal community.

The present act does not provide for any delegation of authority to our communities, or for any co-operation with our communities in the administration of the act. The only provision for the involvement of Aboriginal communities is a section in the present act that compels the Ministry to notify a Band if the Ministry is seeking an order to place a child in its care. They are only compelled to give this notice seven days in advance of the hearing, which might in fact, come several months after the actual apprehension of the child.

Even in situations where a full delegation of decision-making has been made to the Aboriginal agency, final responsibility still lies with the Superintendent. Worse yet, the delegation of authority is not made to the agency, but is vested in the staff of social workers who are employed by the agency. As a result, ministerial policies, based on Anglo-Canadian cultural values and assumptions, continue to play a major role in the provision of services to our children and families. The new act must recognize the right of our communities to assert their decision-making, based on Aboriginal cultural values, in the area of family and child care.

In the longer term, it is anticipated that, with the recognition or affirmation of Aboriginal self-government, our Nations will be free to develop their own laws for family and child protection and those

"Indian people don't just want to be involved in the planning process, but to be in total control of any child and family service legislation."

——— ***Coldwater Indian Band***

"The responsibility for development and delivery of family and child services must be turned over to native communities."

Ktunaxa/Kinbasket
——— ***Tribal Council***

"It appears that the cycle of child apprehension is being broken. [Our] program has never had any children in care whose parents were in care of [our] program."

Spallumcheen
——— ***Family Services***

"Rather than having delegated authority for child protection, the First Nations want a transfer of authority."

Shackan-Nooaitch
——— ***Administration***

laws will supersede provincial law in Aboriginal communities. In the interim:

We recommend that:

12. Legislation must compel the provincial government to recognize the right of an Aboriginal Nation or community to assume decision-making authority for all, or any part of, the administration of the *Family and Child Service Act* through an agency that is mandated by an Aboriginal Nation or community to undertake that responsibility.

13. The decisions on a timetable and schedule for an Aboriginal agency to assert its decision-making responsibility over all, or any part, of the administration of the *Family and Child Service Act* shall lie solely with the Aboriginal Nation or community involved.

It is anticipated that some Nations or communities will choose to phase in a process of total responsibility to administer the *Family and Child Service Act.* In those cases, care should be taken to ensure that the choice to phase in total responsibility does not, in fact, limit that Nation or community to only a portion of the overall responsibility to which it aspires.

14. Agreements with Aboriginal Nations or communities to phase in responsibility over family and child services must contain a clause that clearly states that the agreement does not derogate from the right of that Nation or community to assume full responsibility and jurisdiction.

Appeal Mechanisms

At present, under the existing *Family and Child Service Act,* decisions are made by the Superintendent and are reviewable by Family Court. Family Court, however, is not the appropriate body to resolve disputes regarding our families. The Justice Review Commission strongly recommended that Aboriginal family disputes should be resolved through traditional Aboriginal dispute resolution methods. Courts are a foreign process to our communities. Family Court, as a process to resolve disputes, operates on a model of adversarial decision-making, as opposed to the consensus-seeking process common to our cultures.

" . . . the provincial court system is a totally inadequate form for dealing with child protection matters. The court system is too clogged with other kinds of cases. Cultural differences in First Nations People are ignored. The integrity of a family unit is put in jeopardy."

L'ax Ghels Community Law Centre

Our people are further discriminated against in the adversarial system when children are apprehended, due to the tendency for adversaries to put forward the best argument for the position they are supporting. As a result, the non-Aboriginal system of the Ministry is expected to put forward the best arguments to support a judicial confirmation of the apprehension of the child involved. The parents are expected to counter with any argument that would oppose the judicial confirmation. If, in this situation, the family is experiencing any difficulties and is seeking ministerial services to help remedy the problem, this becomes evidence used against them.

It is only the Aboriginal family that has an emotional stake in the outcome of the judicial decision. Ministerial staff are emotionally detached professionals. Because of the cultural gap that exists between our families on the one hand and non-Aboriginal social workers and courts on the other, a no-win situation is created for the Aboriginal family. If they express their emotional reaction to the threat of losing their children, the expression itself is interpreted as an indication of the family's emotional instability. If they suppress their emotional reaction, it is interpreted as uncaring apathy. Aboriginal culture mitigates against a public display of emotion. It also mitigates against public confrontation. Given the no-win situation presented by the non-Aboriginal Family Court, the most typical and culturally appropriate response is silence. Silence, however, is also usually interpreted by the non-Aboriginal court as apathy, thereby presenting the Aboriginal family with the ultimate "Catch-22".

"The . . . court system . . . is too adversarial, intimidating and imposing."

——— *Usma Nuu-chah-nulth Family and Child Services*

"A child's apprehension coerces the child's parent to enter an adversarial court process. It is a disabling process for the parent at a precise time when parental disability must not be shown if the parent wishes for the child's return. It is also counterproductive for positively co-ordinating a child's reunion with family and supporting the family in preparation for resuming adequate care of their child."

——— *Squamish Nation Council*

We recommend that:

15. Where Aboriginal Nations or communities have developed appropriate alternatives to the Family Court for family dispute resolution, appeals regarding decisions made under the *Family and Child Service Act* must be referred to that dispute-resolution structure.

16. An appropriate dispute-resolution structure would be any structure, designed and mandated by the Nation or community for the purpose of resolving family disputes and making decisions regarding the care of children, that provides protection against conflicts of interest and protects the rights of the women, children and individuals within the context of the rights of the collective.

Liberating
Our Children
•
Liberating
Our Nations

Healing the Wounds

Healing the Wounds

Principles of Financing

Family and child services to the Aboriginal community are characterized by their absence, inadequacy and fragmentation. Behind these characteristics is the failure of both the federal and provincial governments to recognize their obligations to Aboriginal people. In continual, ongoing fiscal policy, each level of government attempts to saddle the other with the greatest possible portion of the financial obligation. At the same time, the two jockey to ensure that the provision of any service does not constitute a precedent for an ongoing obligation by their government. The federal government has attempted to limit its areas of obligation to the health needs and the residential needs of children residing on lands reserved for Indians. As a result, there are some program areas of emotional health and residential care available only to Aboriginal people residing on reserves.

The provincial government has attempted to limit its services to our people to those areas of responsibility mandated under the *Family and Child Service Act.* In the absence of federal family and child protection legislation, the provincial mandate is extended to all Aboriginal people; however, when applied to our children residing on reserves, the federal government compensates the provincial government for its expenditures.

Since the provincial *Family and Child Service Act* deals only with the process by which children become wards of the Province, services are confined to this area. As a result, unless a child is apprehended and placed in the care and custody of the Superintendent of Family and Child Service, the child and his or her family are not eligible for provincial services. The provincial government provides some services to families in crisis, in order to prevent the need for a child coming into care. However, those services are available to Aboriginal people residing off reserves, but not to those people residing on reserve land.

Both levels of government have used the jurisdictional issue of the trust obligation to minimize their expenditures in the area of services to our people, resulting in the inadequacy of services faced by our communities today.

Governments have often tended to play Aboriginal representatives as pawns in an attempt to legitimize the inadequacy of services. Governments invite Aboriginal representatives to participate in cost-sharing negotiations, without empowering those representatives to

"It appears that the Province of British Columbia is willing to be a partner in the field of Indian child care as long as the Federal Government pays the bills. It's tantamount to the Province of B.C. telling Indian people that your children enjoy equal rights as long as the Federal Government foots the costs. This can only be perceived in the eyes of Indian people, as the highest and most malicious form of discrimination towards our very core of life; our children."

——— ***Coldwater Indian Band***

"A federal/provincial transfer agreement and legislation needs to be put in place which will not limit the access of one group of people, based on their living circumstances."

——— ***Kamloops Indian Band***

"If we are to see a reduction in the number of Native children in care in British Columbia, then the responsibility for the welfare of our children must be turned back over to Native communities. In addition to giving recognition to this reality we cannot emphasize enough the need for government to also recognize that there are real and substantial costs involved."

Ktunaxa/Kinbasket
——— ***Tribal Council***

have a meaningful input into those discussions. Both levels of government also invite Aboriginal representatives to provide advisory functions on the distribution of inadequate levels of funding. This puts those representatives in a position of either meeting the needs of one community over the needs of another, or endorsing a process of universal inadequacy of programs.

Neither level of government accepts overall fiscal responsibility for the health and social well-being of our communities, nor does it introduce programs to alleviate problems faced by our communities. Instead, each government level only funds project activities when the initiative has been taken by an Aboriginal community, or group of Aboriginal people within the community. By making resources available via projects, the various applicants are placed in a position of competing with each other for needed resources. In this process of "divide and conquer", both levels of government avoid responsibility for inadequate financial resources to resolve these problems.

Because project funding is subject to annual fiscal priorities, projects funded one year might not be funded the next. Programming in our communities is a stop/start process, with only some of the components necessary to address the problem being available in any particular fiscal year. As a result of the limited resources available, projects are often ineffective, because they only represent one of a number of tools necessary to resolve the problem faced by the community. Aboriginal Nations and communities must have sufficient resources to plan long-term effective solutions.

Under Section 15 of the Charter of Rights and Freedoms, the provincial government is obligated to provide an equal level of services to all of the people residing in that province. The question of cost-sharing of the trust obligation to our people by federal and provincial governments should be undertaken between those governments as a process separate from the commitment of an adequate level of funding.

"What exists today are fragments of programs available through a variety of agencies, provincial and federal programs. It is time consuming and unproductive to spend huge amounts of time bringing together the fragments in order to provide much needed basic family services . . . the service provided is a mini-version of the original proposal that has had to be cut back due to program policies and financial restraints."

—— *St. Mary's Indian Band*

"We are asking for the same services that are available to non-Native communities . . ."

—— *Skidegate Band*

"Legislation should recognize and respect a First Nation's responsibility in the area of family and child services and facilitate through financial and human resource development, the capability of the First Nation to meet this responsibility."

—— *Squamish Nation Council*

We recommend that:

17. **In recognizing the jurisdiction and responsibility of Aboriginal Nations or communities in the area of family and children's services, governments must provide an adequate level of financial resources for the Nation or community to undertake those responsibilities.**

18. **Legislation must guarantee an adequate level of financial resources to Aboriginal Nations or communities**

that undertake jurisdiction and responsibility for family and child services, and that the level of financial resources must guarantee that Aboriginal Nations or communities have the capacity to develop and maintain a level of services comparable to those available in non-Aboriginal communities.

19. **Commitments to Aboriginal Nations or communities must be on an ongoing basis rather than an annual project-to-project basis.**

In many instances, governments assume that services made available to the entire population of British Columbia are equally accessible to Aboriginal people. As a result, where a generic service is available to the entire population, governments tend to refuse to provide financial resources for a similar service to the Aboriginal community. This approach fails to recognize that many services are only accessible to a community if they are culturally specific to that community. Other services, particularly those dealing with personal and emotional problems, are only accessible to the Aboriginal community if the services are staffed by Aboriginal people from the same cultural community. The cultural misunderstandings between Aboriginal and Anglo-Canadian communities are usually too great to permit a non-Aboriginal staffed and administered program to adequately meet the personal and emotional needs of an Aboriginal person or family.

> **"What must be achieved is a system of child care and healing of our families where our traditions and cultures become the primary guideline."**
>
> ***Louis Riel Metis Association***

We recommend that:

20. **In determining an equal level of services to the Aboriginal community, governments must not assume that universal, non-Aboriginal services are accessible to the Aboriginal community.**

> **"Most people from the dominant culture make the mistake of thinking that . . . treating everyone the same way is not racist. In fact, without recognition, respect for, and accommodation of differences, responses are almost inevitably . . . racist."**
>
> ***British Columbia Task Force on Family Violence, 1992***

The provision of financial resources is not only fragmented between the federal and provincial governments, but also between ministries within each government and within various programs within each ministry. As a result, artificial boundaries between family and child services, services to youth in conflict with the law, emotional health needs, and educational needs are divided by areas of inter-ministerial jurisdiction. To successfully undertake the responsibility for the well-being of families and children, our Nations or communities must be in a position to design solutions that cross present federal, provincial and inter-ministerial boundaries.

We recommend that:

21. **The process established by an Aboriginal Nation or community must be acknowledged as the only process that plans and identifies needs in all of the areas directly connected to, and ancillary to, the well-being of the families and children comprising that Nation or community.**

In determining levels of financial resources available to our communities for family and child services, governments must be cognizant of the damage done to our communities by the residential school process, and by the process of removing Aboriginal children from their families through apprehension and adoption. Recently, the provincial government has recognized that there have been children abused while in the care of the Superintendent, and has announced a policy of compensation for those people.

Given the almost universal effect of the residential school system and apprehension and removal of our children from our communities, governments should recognize an additional obligation to our Nations and communities to undo the damage caused by these processes. The resources necessary to undo these damages should be provided as compensation to our communities, thereby enabling our Nations and communities to use complete freedom in designing their own methods of remedying the damage done.

By providing compensation for the damage done, governments will play a major role in the first steps towards healing. One of the most recognized effects of removing children from their homes, whether they are placed in a healthy or an abusive situation, is that the victims of this process come to see themselves as being responsible for their plight. When children are forcibly removed from their home, they believe that it is they who have committed an offence and that they are being punished for it. It is of major therapeutic value to these victims if the people responsible for that removal acknowledge their fault in the process.

We recommend that:

22. **Federal and provincial governments must compensate Aboriginal communities for the negative effects of the residential school program and the process of apprehending Aboriginal children and removing them from their communities.**

"We need to establish community-based social programming where we involve the whole community in the healing processes."

——— ***Coldwater Indian Band***

"It is imperative that the community membership becomes pro-active in the planning/resolution and decision-making within the child welfare process."

——— ***Heiltsuk Band Council***

"The past injustices are things that we cannot change, because they have already taken place, but that should not be used as an excuse for not doing something about the result of past actions."

——— ***Coldwater Indian Band***

Churches should also acknowledge their role in the residential school program and compensate accordingly.

The present *Family and Child Service Act* does not require government to provide service to individuals. Even when an order issued by a judicial body provides that family or individual service is a condition of a child remaining in the parental home, there is no obligation for government to make those services available.

We recommend that:

23. Government must guarantee the availability and accessibility of services when those services are required by a judicial order to keep a family intact or to re-unite the family.

"A review needs to be done to compare and correct the inequities . . . "

——— *Kamloops Indian Band*

Many times, when our communities have been provided financial resources to provide a service to their community, the level of financial resources has created inequities. These inequities have not only been in the level of service when compared to the on- and off-reserve community, or to the Aboriginal and non-Aboriginal community, but also in the compensation received by our people who staff those services. In some instances, government agencies have not even been prepared to analyze the job descriptions and expectations of the staff in relation to similar job descriptions and expectations in the non-Aboriginal community. As a result, the levels of compensation for our people working in these areas has been unaddressed, usually to the detriment of the Aboriginal staff.

"It is incumbent upon the Federal and Provincial Governments to provide adequate services to First Nations Peoples and their communities. The level of services should be equal to that provided to all other children residing in the Province."

——— *Penticton Indian Band*

Even in the area of the provision of foster care, differential rates are applied for the Aboriginal and non-Aboriginal community.

The Province has a policy of providing for the special needs of children in care. As a result, the remuneration available to foster parents varies depending on the level of needs of the child. This process involves attempting to match the child's special needs with the special abilities of the foster parents. The criteria for identifying the qualifications of the foster parents to care for a special-needs child is a process that discriminates against the potential Aboriginal foster care provider. In the case of our children, the major neglected requirement is often the cultural association with foster parents. When this is recognized and acted upon, the Aboriginal foster parents are not compensated for meeting this need because they are not considered qualified to meet other special needs. Despite the fact that the level of needs of the child remains constant, the Aboriginal foster parent is not compensated for meeting those needs.

"Adequate funding needs to occur to ensure that services to Native people do not become 'second rate'."

——— *Kamloops Indian Band*

We recommend that:

24. Financial arrangements with Aboriginal agencies must ensure equity both in the level of services and in the remuneration to employees and alternative providers of child care.

Preventative Services

In carrying out this review, the two most frequent criticisms of present family and child policy and practice were:

1) the inappropriate apprehension of children and the removal of those children from their communities; and
2) the lack of preventative services aimed at resolving family problems rather than at separating families.

It is not surprising that these two problems are repeated continuously, since they are linked in the present policy and practice.

The federal government does not have an Aboriginal family and children's act, and exercises its trust obligation through reimbursing the province in this area. The province, on the other hand, in an attempt to avoid providing universal support services to families, and in light of the accompanying budget considerations, has attempted to limit services to children and families at risk. This generally means not providing services until the family is in a crisis. In many instances by this point, apprehension and removal of the child is seen as the only viable alternative. Once the child becomes a ward of the Superintendent, the financial resources for providing supports for that child are available. As a result, apprehension and the removal of the child from the family is often the only manner in which support can be given to the child.

We recommend that:

25. Legislation must guarantee that a child shall not be removed from his or her family solely because the child requires support services.

26. Any child in need of support services must be considered a child-in-need of support, and financial resources must be made available to provide the supports needed by that child within the context of the child's family.

27. The goal in the provision of all social services must be the unity of the family structure and, to the greatest extent possible, financial resources must be available to maintain the integrity of all families.

" . . . the only service that we received was when they apprehended our children and placed them in non-native homes . . . There was no funding or support services provided to help families or children to resolve the difficult problems they had to deal with."

——— *Usma Nuu-chah-nulth Family and Child Services*

"The Ministry needs to look at providing services to parents as prevention, before apprehensions are necessary."

——— *Kamloops Indian Band*

"Any contact [with MSS] is usually as a result of a crisis, which limits the amount of success a family can have in retaining the child."

——— *Kamloops Indian Band*

"Spallumcheen Family Services is designed to return the care of the Spallumcheen children to the community. The long term goal . . . is to eliminate the need for foster care while maintaining preventive services."

——— *Spallumcheen Family Services*

"Through prevention, the need for apprehension of children from their natural parents would be eliminated."

——— *St. Mary's Indian Band*

At present, a child in need of protection is defined as a child under the age of 19. This is an arbitrary age, particularly when applied to the eligibility of children for services. Many children, and especially those who have experienced a family breakup, also experience difficulty during their mid-adolescence as they struggle to establish their identity and positive self-image. The acting-out behaviour that often accompanies these problems often disrupts the child's education and social development. As late adolescence brings a maturity that better prepares these children to cope, young people are faced with an arbitrary age at which resources will be withdrawn.

We recommend that:

28. While 18 should be the maximum age at which guardianship may be exercised over a child, the age at which a child is eligible for services must be established on a flexible basis that takes into account the specific needs of each child.

In the provision of financial resources for social services to our families, several considerations must be taken into account. First, it must be recognized that the effects of both the residential school system and the apprehension and removal of our children from our communities has been so widespread as to affect virtually every extended Aboriginal family in British Columbia.

It must also be remembered that a central consideration of dysfunctional problems in families has been the family's ability to resolve problems on its own. Often the resolution of these problems is related to the family's financial ability to change aspects of family life. Poverty, therefore, plays a major role in defining families in need. Poverty also lies at the heart of the inability of families in need to resolve problems within the context of their extended families. It is often financial barriers that prevent other members of the extended family from stepping in and providing care on a temporary or longer-term basis, when the nuclear family is unable to do so. The colonial usurping of our resources and the systematic exclusion of our people from contemporary economic life have ensured that Aboriginal people do not have the financial resources to address these problems. If issues of income security, housing, health care and employment are not addressed, our families will continue to require substantial supports in order to maintain the integrity of the family.

"The legislation should . . . make a requirement . . . to provide required services to parents prior to the need for apprehension of the child . . . "

——— ***Penticton Indian Band***

" . . . jurisdictional matters force Aboriginal people to accept and work within the limitations and confines of provincial child welfare legislation. Providing services to families often requires bringing children into care so that the much needed treatment and supplementary services can be provided through child maintenance billings."

——— ***Cowichan Band***

"A major focus . . . is to support individuals and families strengths so that children remain in the care of their own family."

——— ***Spallumcheen Family Services***

"Our concept is not only to look at one aspect of child welfare, but to integrate the whole community in the overall development of children."

——— ***Coldwater Indian Band***

" . . . child protection is a vital service that can best be accomplished within a supportive framework by utilizing resources that will assist parents in addressing their life's circumstances."

——— ***Cowichan Band***

Failure to provide the resources necessary to resolve these problems will ensure that the problems of today are also the problems of tomorrow, and that Aboriginal families will continue to be torn apart. Removing an Aboriginal child from his or her extended family setting is almost guaranteed to result in an abnormal development for that child, and a potentially high risk for that child not developing into a healthy, contributing member of society.

Much has been written on the early effects of the child's bonding with his or her caregivers, and the primary trust relationships that develop based on that bonding process. The destruction of those bonds serves as a major impediment to the child developing attitudes of trust and belonging, which greatly affect the child's adolescent and early adulthood development. Drug and alcohol abuse as well as teenage suicide can be directly traced to the absence or disruptions of the early bonding process.

Much is also known about the relationship between young adolescent children and their caregivers in the development of identity, the role models upon which children base their behaviour. If a child is not raised in an environment with which he or she can identify, and has no role models to relate to, the process faced by the adolescent in developing an identity is greatly impeded. This leads to frustration, which manifests itself in acting-out and self-destructive behaviour, or both.

It is well known that socially unacceptable behaviour and self-destructive behaviour are closely related to stress. It is also well known that major life changes are the greatest inducers of stress a person can encounter. Tests to measure stress levels in individuals generally focus on cataloguing the changes the individual experiences in social surroundings.

If changes are the major contributor to stress in adult life, the effects upon children, who have a much reduced ability to influence the changes they experience, must be multiplied many times. The process imposed upon Aboriginal children through apprehension and removal from their community means removal from their family, friends, educational setting, physical surroundings, culture and traditions, and from people to whom they can relate. It is little wonder that the process of dysfunction within our families has become cyclical. The only solution to breaking this cycle is through the provision of preventative services that are highly accessible and available.

"Many family violence issues seem to be a direct result of the high unemployment rates."

——— Saanich Indian School Board

"Simply taking the children away from the parents or the problem is not enough. The family unit must be maintained and in order to ensure this, intervention in the form of counselling the whole family and dealing with the root of the problem, not just the symptoms, is necessary."

——— St. Mary's Indian Band

"Healthy Squamish Nation children come from a healthy family and community."

——— Squamish Nation Council

"Placing a child in a home of a different background adds greatly to the trauma the child experiences."

——— Nimpkish Health Centre

" . . . apprehension is a 'reaction' to a family problem. Few preventive services are available in response to family troubles."

——— Hazelton Child and Youth Committee

" . . . a holistic approach must be taken when dealing with child welfare."

——— *St. Mary's Indian Band*

We recommend that:

29. Aboriginal Nations and communities must have the ongoing financial resources to implement a wide range of preventative services that are wholistic and unfragmented. The services must be available in a culturally appropriate manner, as determined by the specific Aboriginal Nation or community, and delivered by people from that community.

Many Aboriginal communities lack even the physical structures from which to provide services. In some cases, even the privacy required to enable a confidential discussion of personal problems is not readily available. We are recommending that family and child services be available in each community. The Royal Commission on Health Care and Costs recommended a greater availability of health care service in Aboriginal communities. From our perspective, it is desirable that these services be available in a wholistic manner that does not separate family and child services from health care services. We also believe that resources should be available to incorporate traditional healing into the provision of these services.

We recommend that:

30. Each Aboriginal Nation or community must have the ongoing resources necessary to develop and operate wholistic healing centres capable of addressing the mental, physical and spiritual needs of the people it serves.

"Culturally appropriate resources for children and families specifically addressing child physical, sexual, emotional abuse, child neglect and family development should be established in aboriginal communities."

—— *Squamish Nation Council*

In the past decade, there has been a 37.6 % increase in the number of single-parent families in British Columbia. Our families have a much higher representation of single-parent families than the non-Aboriginal population. Forty-seven percent of the children admitted to the care of the Superintendent of Family and Child Service come from single-parent families. As a result, specific attention must be paid to the needs of single-parent Aboriginal families. The major intrusions on the extended family in Aboriginal communities, and the economic dislocations of Aboriginal people, have left many single-parent families geographically separated from the rest of their extended family. It is not reasonable to expect these families to function without support.

We recommend that:

31. **For single-parent Aboriginal families, respite and homemaker services must be available universally and on demand.**

"Community based family treatment programs would be developed. This would allow for the family to stay united and the programming and the timing of the program would allow for the total family to continue to stay at home in their community while constructively working on their problems."

The Interior Indian Friendship Society

Added to the large number of Aboriginal single-parent families is a disproportionately large number of families in which the wife is the major income earner. Costs of child daycare consume a major portion of the income earned by these women, thereby negating their employment income and subjecting them and their families to continuing poverty.

We recommend that:

32. **Daycare for Aboriginal children must be universal and available on demand both off and on reserves.**

"The resources available for band social programs has been very limited for family and child services . . . There is no family support mechanism - such as daycare, mental health, handicap care, family support counsellor."

Nicola Valley Tribal Council

Resources must be universally available to offset the effects of the residential school system and the child apprehension and removal process.

We recommend that:

33. **Aboriginal communities must be in a financial position to offer a variety of services, including family support, counselling and re-establishing appropriate parenting.**

A major symptom of colonialism on our communities is drug and alcohol abuse. In order to break the cycle, treatment for addictions must be accessible and available. At present there is a very small number of Aboriginal treatment facilities throughout the province, all of which have waiting lists, and most of which are located a considerable distance from the Aboriginal populations they serve. Treatment is not available in a timely manner. The distance one must travel for treatment provides an impediment to seeking that treatment. In many instances, a treatment program is available to treat the individual only, when the problem affects the entire family.

We recommend that:

34. Aboriginal family drug and alcohol treatment programs must be available in each Aboriginal Nation or community. These services must be wholistic and culturally appropriate, dealing with all of the related problems and not simply the abuse symptoms.

Our communities suffer a disproportionate rate of suicide. The consequences of suicide are not only tragic for the victim, but also for friends and family who must cope with the suicide. This stress is only one more added to those already affecting Aboriginal communities.

We recommend that:

35. Each Aboriginal Nation or community must have the financial resources to provide suicide prevention services, as well as post-suicide counselling and support services.

Aside from the overwhelming lack of economic opportunities, a major contributor to the abuse of drugs and alcohol and other social problems experienced by adolescents is the lack of alternative activities, recreational services and educational opportunities, particularly in isolated Aboriginal communities. The ghettoization of our children's lives must be ended.

We recommend that:

36. Financial resources must be available so that every Aboriginal community can provide recreational facilities, educational opportunities and cultural, travel and exchange activities comparable to those available to non-Aboriginal communities in British Columbia.

One of the reasons given for the apprehension of our children and their removal from their families is the family's inability to provide services to children with special needs, either physical or emotional. Most recently, children who are suffering from fetal alcohol syndrome or neonatal abstinence syndrome have been added to this category. In this latter group of children particularly, extensive attention is needed during the first two years of life. Given the proper support during those first two years, a child can generally develop normally. It is during those first two years that a child's primary trust relationships are established. Given the later negative effects of removing our children from their community and culture, it is extremely important that these children be given the opportunity to be raised within their extended family structure.

" . . . with foster care and adoption, we do not accept the standards that are used by MSS . . . "

Shackan-Nooaitch Administration

We recommend that:

37. Extended families of children with special needs must be provided with the resources necessary to meet those needs.

Acquiring and Sharing Knowledge

One of the greatest causes for the perpetuation of the cycle of government intervention into Aboriginal family life has been the imposition of Anglo-Canadian standards on our families. The rationale for the residential schools was based on these divergent standards. At the very heart of the process of assimilation is the assumption that European-determined standards are both beneficial and acceptable to our people. Anglo-Canadian standards for determining children in need of care have been a major contributor to the large number of Aboriginal apprehensions. Anglo-Canadian standards in approving alternative resources for children who have been removed from their families, is one of the major contributing factors to Aboriginal children being placed with non-Aboriginal families. Anglo-Canadian standards of educating social workers, educators and health care professionals has also been a major contributor to the gross under-representation of Aboriginal people in these fields of activity. This under-representation in turn has led to the provision of services in a culturally inappropriate manner, while at the same time undermining Aboriginal family values, traditional Aboriginal healing practices, and the educational processes necessary for Aboriginal children to develop a positive self-image based on Aboriginal identity.

"Child welfare must be in the mandate of the Haida Nation. Haida Nation are the ones who can make the best decisions - for the well being of our children. Not by outside standards, by our OWN STANDARDS!"

Skidegate Band

"First Nations people are the ones who can make the best decisions for the well-being of our children. Not by outside standards, by our own standards."

Northwest Band Social Workers Association

We recommend that:

38. Governments must make resources available to Aboriginal Nations and communities to develop methods of replacing non-Aboriginal standards with culturally appropriate methods for sharing knowledge and providing care.

It is obvious that culturally appropriate caregiving cannot occur unless our people are a part of the decision-making capacities in the delivery of these services, and unless these services are staffed by Aboriginal people from the communities they serve. For this to occur, a major emphasis must be placed on the areas of knowledge needed by Aboriginal people in our own communities. At present, most training is available in non-Aboriginal institutions, often located far from our communities. It does not take into account the cultural inappropriateness of either the training methods or content. Both federal and provincial training and education policies favour the expansion of non-Aboriginal training and educational institutions.

In many of the communities we visited, the concern was raised that education be inclusive of all knowledge available in non-Aboriginal institutions, and that training and education must not only include components of Aboriginal culture, but must be delivered in a manner compatible with our culture. These communities also pointed out that educational opportunities must be closer to home for our people, and must be designed to meet the needs of Aboriginal people in each of our communities.

Our people continue to drop out of the public school system at a much higher rate than non-Aboriginal people. Our people also have a much greater tendency to continue their education after taking on the responsibilities of providing care for their children. Education program delivery must be designed to consider these factors.

We recommend that:

39. The Ministry of Advanced Education, Training and Technology must begin an immediate process of consulting with Aboriginal communities to determine their education needs, to determine the optimum method of meeting those needs, and to ensure that educational achievements are adequately accredited.

40. Aboriginal Nations and communities must be in a position to design methods of sharing and expanding knowledge so that these methods are culturally appropriate to Aboriginal life, and so that it is possible for Aboriginal communities to employ their own people to meet their needs.

There were five of them. They were all involved as care-givers in their community. One had been employed in this capacity for 20 years, another one for 15 years. They recognized the problem of sexual abuse, and sought to deal with it. They sought training from a program funded by the Province and run by the Justice Institute. They were advised that the Institute would consult with them and modify the training to meet the needs of their specific community. No such consultation happened, either on the content of the course or the admission policy. Four of them were turned down because they had insufficient backgrounds to take the training despite their years of employment in these positions. The program was not modified to meet the cultural needs of their community. The instructor was a non-Native person from another community with no local knowledge of the immediate issues.

They have been denied the opportunity to be certified sexual abuse counsellors.

Liberating
Our Children
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Liberating
Our Nations

Internationally Recognized Rights of the Child

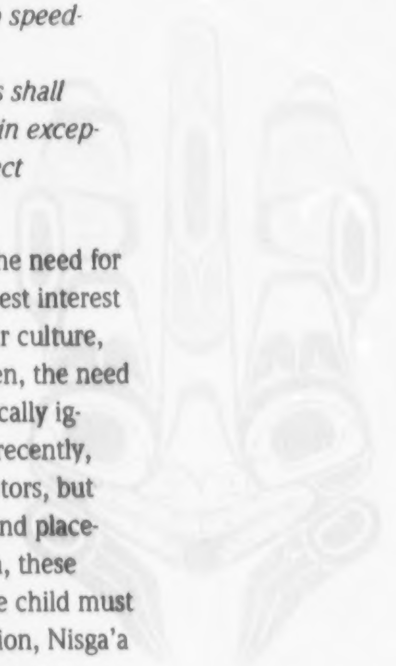
Internationally Recognized Rights of the Child

In 1991, Canada became a signatory to the United Nations Convention on the Rights of the Child. That Convention recognizes the importance of children being raised within their culture and maintaining their identity by demanding that:

"The legislation be amended to include declaration about the rights of the child . . . the right to legal counsel, the right to have their opinion considered, the right to be involved in their case planning, the right to have their choice of placement considered, and that Aboriginal children have the right to be placed with a relative . . . so they can remain close to their nuclear and extended families."

——— *Kamloops Indian Band*

> *"[The signatories] take into account the importance of the traditions and cultural values of each people for the protection and harmonious development of the child."*
>
> *"State parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided by local custom."*
>
> *"The child shall be registered immediately after birth and shall have the right from birth to a name and the right to acquire nationality."*
>
> *"State Parties undertake to respect the right of the child to preserve his or her identity including nationality, name and family relationships."*
>
> *"Where a child is illegally deprived of some or all of the elements of his or her identity, State Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity."*
>
> *"A child whose parents reside in different states shall have the right to maintain on a regular basis, except in exceptional circumstances, personal relationships and direct contact with both parents."*



Until very recently, Canadian courts have ignored the need for children to maintain their cultural identity, and "in the best interest of the child" they have often removed children from their culture, denying them their identity. With respect to our children, the need to maintain their culture and identity has been systematically ignored by courts considering their "best interest". More recently, this requirement has been considered as one of many factors, but not an overriding requirement, in decisions on custody and placement of children. We therefore feel that for our children, these rights must be protected by law. The best interest of the child must recognize that children should be with their specific Nation, Nisga'a children with Nisga'a families, Ktunaxa children with Ktunaxa families, Metis children with Metis families, etc.

With respect to Aboriginal children we recommend that:

41. Entities that have the responsibility for the protection of children, and judicial bodies empowered to make decisions regarding the custody and guardianship of children, shall ensure that those children are not denied the right to know their birth name and the names of their birth parents.

42. With respect to the care of a child, the child's birth parents shall always be seen as the most desirable providers of that care. Where the circumstances require the removal of that child from his or her birth parents for the protection of the child, the goals of any plans made for the child must include the reunification of that family, wherever possible. Where not possible, the relationship between the child and his or her birth parents must be maintained, except in situations where such a relationship will result in the physical harm of the child.

43. In cases where neither of the birth parents will or can provide safe care of the child, the extended family of that child shall be considered to be the next most appropriate source of care.

44. In cases where neither of the birth parents nor the extended family will or can provide care of the child, other members of the child's Aboriginal Nation shall be considered to be the next most appropriate source of care.

45. Where judicial bodies empowered to make decisions regarding the guardianship, care and custody of a child are deliberating such decisions, the birth parents, any member of the extended family present, and the political body representing the child's Aboriginal Nation or community shall all be seen as parties to those deliberations, and shall have the right to be heard in those deliberations and weight shall be given to their opinions.

46. In the event that an Aboriginal child has been removed from the care of members of the child's Aboriginal

"Recent research has shown the importance to children of their past experiences, their relationships and their birth families. We feel it is imperitive that legislation must not preclude such knowledge; any permanent planning must be 'open'. Secrets about birth families kept from children can cause stress, anxiety, identity problems and can lead to major emotional trauma."

— *Hazelton Child and Youth Committee*

"It is unbelievable the way a foster care review had to be done before placing a child with a relative that we know can do a very good job."

— *Iskut Band Council*

"[new legislation must provide for] increased emphasis on the role the extended family plays in a child's life."

— *Usma Nuu-chah-nulth Family and Child Services*

Nation, those entities responsible for such removal shall turn over to the political body representing that Nation, all records describing the reasons for removal and the present whereabouts of the child.

47. **The provincial government must begin negotiations with other Provinces, with the United States of America, and with any other country, where applicable, to establish protocol agreements that will facilitate the return to the care of their Nation, all Aboriginal children who are not in the care of members of their families. These protocol agreements must also cover children who might come into the care of some other jurisdiction in the future.**

48. **Where requested by that Nation, or the family of the child, governments must make all reasonable efforts to ensure the reunification of that child to the care of members of the child's Nation and must provide assistance in ensuring that reunification.**

49. **In the event of such reunification, the government must provide resources to assist that child, family and community to adjust to the reunion with the Aboriginal Nation from which the child was removed.**

"Many extended family members are economically limited and should be financially supported while providing long-term care to children."

— ***Squamish Nation Council***

"We firmly believe that Aboriginal children belong in their communities."

Louis Riel
— ***Metis Association***

"Recommended that legislation direct the reunification of Native foster children to their natural family and/or community where appropriate."

Northern Native
— ***Family Services***

The *Indian Act* provision for the registration of Indian children had a major effect on defining the membership of Indians in their particular Nations.

The process of registering an Aboriginal child as an Indian is a separate process from registering the birth of the child, and is a voluntary process initiated by the mother. In the event that the mother does not complete the registration forms, the child does not become registered as an Indian.

We recommend that:

50. **The process for registering Indian children at birth must be part of the same process by which their birth is registered.**

" . . . children's wishes are not considered in child welfare matters."

——— *Kamloops Indian Band*

The United Nations Convention on the Rights of the Child also states that:

> *"State parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely on all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative procedure affecting the child."*

Under present child protection legislation, the rights of a child to be heard are not acknowledged, and children do not have the right to initiate action where they feel that decisions about their care are not in their best interest. As a result, a child who is placed in the care of the Province has no say in the nature of the order issued, as to whether it be temporary or permanent, the conditions attached to such orders, or his or her placement in a care facility. In assessing the quality of a care facility for ongoing licensing purposes, the views of the child or children in that facility are not a relevant factor and are often not solicited.

We recommend that:

51. **A child who is capable of forming his or her own views shall be given the opportunity to be heard at any proceedings affecting his or her care and custody and shall have the right to initiate proceedings to review those decisions, including the right to initiate proceedings to change his or her guardianship; and his or her views shall be given weight in any ensuing deliberations.**

Liberating Our Children

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Liberating Our Nations

Ending the Legalized Abduction of Aboriginal Children

Ending the Legalized Abduction of Aboriginal Children

Paramountcy of Aboriginal Law

The concept of crisis intervention is foreign to Aboriginal families because, traditionally, problems were identified at their onset and solutions found before they rose to crisis proportions. In the last century and a half, this situation has been totally reversed. Due to the colonial pressures placed on our communities and families, and the lack of resources to intervene in the problems resulting from those pressures, crises have come to characterize many of our families. Our Nations and communities must be in a position to meet those crises, with appropriate mandated authorities, until such time as our Nations and communities are able to fully implement the wide range of required preventative services.

The history of crisis intervention in our family life by non-Aboriginal agencies has created a cycle of crises rather than alleviating them. Our Nations and communities must have the sole responsibility for determining the methods of responding to these crises.

For the Aboriginal family, crisis intervention can generally be equated with the apprehension of children. This sets up a unique and discriminatory practice when applied to our families. The present *Family and Child Service Act* protects the Superintendent and the social workers to whom the Superintendent delegates authority from liability for actions undertaken in good faith. It does not protect them from liability for acts of negligence. As a result, the Ministry generally tends towards conservatism when deciding to leave children with their family after a complaint is lodged, to approve foster homes or adoption homes, or to return children to their family after an apprehension. Given the relative poverty of Aboriginal families, the European values accenting material comforts in terms of purchasing power, and the general stereotyping of Aboriginal people, decisions are based generally on a negative attitude towards our families as an appropriate place for children. As a result, the decision is far too often made to apprehend the Aboriginal children, place them in a non-Aboriginal caretaker facility, and proceed to a permanent custody order and adoption. These decisions are made on the basis of the caretakers' financial ability to meet the child's physical needs as opposed to meeting the child's cultural, emotional, psychological and spiritual needs. These actions exemplify the negative effects of a colonial mind-set that can only be

She has one child. She is involved in a common-law relationship. She recently discovered that the father of her common-law husband was sexually abusing her child. She reported the matter to MSS and to the R.C.M.P. The R.C.M.P. advised her to take the child and leave the home so that the abuser would not have access to the child. MSS applied for a court order restraining her from seeing the husband. At the court hearing she encountered the husband and they went for lunch in a public restaurant to discuss the problem. MSS interpreted this as a violation of the restraining order, and apprehended the child. The R.C.M.P. advised there was insufficient evidence to charge the abuser. The only resolution of her actions has been that her child has been apprehended.

" . . . child welfare intervention by non-Aboriginal social workers has been intrusive, pervasive, and has resulted in more damage to its clients than the original reason for intervention."

——— *Cowichan Band*

reversed by placing decision-making on these issues in the hands of our people.

At present, the provincial *Family and Child Service Act* is enforced on all Aboriginal people in British Columbia. It is neither politically nor socially desirable for non-Aboriginal governments to be involved in this role, nor is it obvious that non-aboriginal governments have a legal jurisdiction to be involved. It is contradictory, in the long run, for this legislation to mandate any institution with the authority to intervene in Aboriginal family life. On the other hand, the major intrusions into the decision-making structures of our communities have greatly reduced our ability to act in crisis. At the same time, the process has escalated the crisis faced by our families to the point where children would be in danger if a vacuum were created by legislative reform.

"Our intent in being here is not to validate this process or justify the Provincial mandate that gives you control over our children."

Northwest Band Social Workers Association

Many communities we visited acknowledge that this vacuum must not be created. In all cases, however, it was pointed out that this situation was created in the first place by the intrusion and enforcement of non-Aboriginal law in a process that never received Aboriginal consent. Interim measures requiring a non-Aboriginal legal sanction cannot be interpreted as consent by our Nations and communities to the extension of provincial legislative jurisdiction into Aboriginal family life. Such consent was specifically withheld in every submission we received. It is not the intention of the authors of this report to imply either our consent or that of the Aboriginal people with whom we consulted. Provincial law must be reformed to eliminate the potential of the Superintendent and Family Court from unilaterally and inappropriately removing our children from their families. It must prohibit anyone from permanently removing an Aboriginal child from his or her family. It must prohibit anyone from removing an Aboriginal child from his or her Nation or community. And it must end the practice of having Aboriginal children adopted into non-Aboriginal homes.

The law must strengthen the recognition of the role of the extended family and must guarantee that support is available to the family in a timely manner. The legislation must compel the Province to vest all of the jurisdiction and responsibility of the Superintendent in the entity created by each Aboriginal Nation or community for that purpose, on a timetable determined by that Nation or community. Finally the legislation must recognize the paramountcy of family and child law enacted by our Nations. The status of our laws must be properly recognized as the Laws of First Nations, and not as a lower form of government.

We recommend that:

52. Upon request from any Aboriginal Nation or community, all of the responsibilities and jurisdiction vested in the Superintendent of Child and Family Service must be vested in that Aboriginal Nation or community so requesting, on a timetable determined solely by that Nation or community.

53. When Aboriginal Nations enact their own laws with respect to families and children, provincial legislation must acknowledge the paramountcy of these laws with respect to any provision of the *Family and Child Service Act*, the *Family Relations Act*, the *Adoption Act*, the *Infants Act*, the *Public Trustee Act*, any subsequent amendment to any of those acts, and any legislation involved in the enforcement of those acts.

"While self government agreements are on the verge of being signed, authority and resources for the care of Indian children requiring protection remains with the Provincial government. This must change."

— *First Nations Family and Child Care Workers Society*

"The Squamish Nation reserves the right to determine our lawmaking process."

— *Squamish Nation Council*

"We don't simply want to be 'involved' in the planning of the child's case, we want to be making the decisions for the care of the child."

— *St. Mary's Indian Band*

"When coming on to the reserve, Social Services don't give the office a call beforehand; they just arrive and say they are concerned about someone."

— *Iskut Band Council*

In 1989, the Ministry of Social Services and Housing developed an extensive policy for Aboriginal people that acknowledged the desirability of our communities being involved in the decision-making pertaining to our children and families. As a result of that policy, the Ministry has entered into a number of protocol agreements with Aboriginal Nations. These protocol agreements are intended to recognize the respective roles of the Ministry and the Aboriginal community with respect to decision-making related to our children in need of protection.

Some of these protocol agreements acknowledge an extensive role of our communities in this decision-making process. Many of these agreements, however, simply acknowledge a token involvement of the Aboriginal community in the planning for children-in-care or in the process of coming into the care of the Superintendent, and commit the Aboriginal community to the extensive rules of confidentiality that characterize present Ministry policy and practice. Many of these agreements contain no commitments from the Ministry with respect to the involvement of the Aboriginal community in the planning for their children.

We feel that the use of protocol agreements could be a useful transitional process in the devolvement of decision-making to our Nations and communities. This can only be the case, however, if those agreements are entered into in the spirit of acknowledging the responsibility and jurisdiction of our Nations and communities with respect to their families and children. These agreements must be used only as a vehicle to facilitate a transition from the intrusion of ministerial decision-making in Aboriginal family life to the assertion of responsibility by the Aboriginal Nation or community over decisions affecting the families and children that make up that Nation or community.

"It is very important that we undo the terrible ravages of residential schools, child apprehensions and the Indian Act by fully supporting Aboriginal families when they want to foster a child of a relative."

Indian Homemakers' Association of B.C.

We recommend that:

54. In each Aboriginal Nation or community in which the Ministry is exercising jurisdiction under the *Family and Child Service Act*, the Ministry must enter into an agreement with that Nation or community. That agreement must acknowledge the areas of jurisdiction and responsibility that the Aboriginal Nation or community wishes to exercise. It must detail a plan by which areas of temporary jurisdiction exercised by the Ministry will be transferred to the Aboriginal Nation or community, and a timetable for doing so. The agreement must also detail the provisions of financial resources from non-Aboriginal government to the Aboriginal Nation or community to enable the Nation or community to undertake the responsibilities identified in the agreement.

55. Each agreement must contain a clause clearly indicating that the intention of entering into the agreement does not constitute an acknowledgement of provincial jurisdiction in Aboriginal family life, and does not abrogate or derogate from any existing rights of Aboriginal people.

We acknowledge that it will not be possible to identify all the potential pitfalls that may exist in the implementation of the recommendations in this report. We therefore recognize the need for an ongoing monitoring of the implementation of these recommendations, and a series of periodic reviews to ensure that the anticipated legislation and implementation is in accordance with the intentions of these recommendations.

We recommend that:

56. **The Ministry of Social Services shall extend the present legislative review process to ensure that there is an ongoing monitoring of the implementation of the recommendations in this report, and shall review their effectiveness from the perspective of Aboriginal people.**

> **" . . . the Legislative Review Committee must be kept operative until the recommended changes become legislation."**
>
> ***Usma Nuu-chah-nulth***
> ***—— Family and Child Services***

Children in Need of Protection

The present *Family and Child Service Act* provides a number of definitions of children in need of protection. Based on that need, it empowers the Superintendent of Family and Child Service to intervene in the lives of families, and make alternative decisions about the care and custody of children. In empowering the Superintendent, the act makes no differentiation between children facing immediate danger if they are not removed from their residential situation and those children who might suffer ill effects from continuing in that situation for a long time. The present act allows the Ministry to intervene and apprehend children on an arbitrary basis and justify the apprehension after the fact. While this might be desirable in a situation of immediate danger to the child, it provides no protection to the family even when no immediate danger to the child exists.

> **"There is no doubt in my mind that the system has to change completely. I know that Native people must have control over their own child care for any real fundamental change to occur."**
>
> ***Indian Homemakers'***
> ***—— Association of B.C.***

We recommend that:

57. **The *Family and Child Service Act's* definition of "children in need of protection" must differentiate between children who are in immediate danger in their present environment and children who would suffer in the long term if an intervention did not occur, in order that the family can be afforded the protection of due process or the alternative of a mediated intervention where this would not endanger the child.**

58. **Unless there is a real and immediate danger to the well-being of the child, the child cannot be removed from his or her home without an order from a judicial body.**

59. **Judicial bodies must be able to order the removal, from the home, of the person presenting a threat to the child, rather than removing the child.**

> **"Where there is abuse by a male parent why is it that it is the mother and children who have to leave the family home and not the male partner? Why is it the mother who must then prove herself a good parent?"**
>
> ***Indian Homemakers'***
> ***—— Association of B.C.***

> **"The new legislation should allow for the removal of the alleged abuser, as opposed to the apprehension and relocation of the child."**
>
> ***Usma Nuu-chah-nulth***
> ***—— Family and Child Services***

The Superintendent and the courts have the ability to require that the ongoing contact between the parent and the apprehended child be supervised. This supervision can be required arbitrarily. Supervision orders often appear to be more connected to bureaucratic regulation of Aboriginal family life than to the protection of our children. Many supervision orders appear to be unnecessary. They do, however, have the effect of reducing contact between parents and children and pave the way for the Ministry to apply for a permanent custody order.

We recommend that:

60. Unless a birth parent presents an immediate and real danger to the well-being of his or her child who has been removed from the home, birth parents must be allowed the greatest reasonable amount of unsupervised access to the child.

Complaints and Investigations

Under the present implementation of the *Family and Child Service Act*, the Ministry carries out an investigation on any complaint or report that indicates a child might be in need of protection. With respect to our communities, this process is generally the first step in a process leading to the apprehension of an Aboriginal child. In many cases, these investigations lead to inappropriate apprehensions because of the lack of knowledge of the Aboriginal community by Ministry staff, the failure of Ministry staff to take cultural differences into account, or the lack of options available.

This process has created a second area of problems for our communities. Many of the reports leading to investigations emanate from other Ministry staff, who are charged with the responsibility of delivering other social services to the Aboriginal community, or from contractors undertaking those responsibilities. Aboriginal people, in availing themselves of those services, bring their family under the scrutiny of the Ministry. Based upon numerous misunderstandings, and failure to appreciate cultural differences, the seeking of social services by an Aboriginal family exposes the children of that family to the danger of being apprehended.

We recommend that:

61. In the event that the Ministry receives a report or complaint of an Aboriginal child being in need of protection, the Ministry must:

He is a grandfather. He has raised six children. One of his children in turn has five children. They have been apprehended. He is from northern British Columbia. He travelled to Vancouver to visit his grandchildren. He was denied access to them by the Ministry. He has five empty bedrooms in his house. He and his wife live there alone. He and his wife would like to provide care for their grandchildren. They have not been advised as to how to even begin such a process. They are, however, aware that they are all in non-Native homes in the Lower Mainland. Two are in the homes of people of a different religion and are being raised in that religion.

"A family support counsellor from within the community would know about family strengths and weaknesses, potential community resources and extended family relationships."

——— *Skidegate Band*

She was 29 years old. She had been abused as a child. She was the mother of two children and was pregnant with a third. When the baby was due, the social worker suggested that she should put the other two children into care for a 3-month period while she devoted her full energies to her own healing and to the care of the newborn child. She agreed.

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a) if the child is from a Nation or community that has an entity in place to investigate reports of children in need of protection, turn over the information received by the Ministry and the responsibility for investigating the complaint to that entity;

b) if the child is from a Nation or community that does not have such an entity in place, notify the body generally considered to represent that Nation or community about the nature of the report or complaint, and determine a course of action in conjunction with that body.

At present, reports made to the Ministry alleging child abuse or neglect are treated with complete confidentiality by the Ministry. As a result, the situation is created whereby allegations of child abuse and neglect become tools in disputes over the custody of children. In other cases, the complaints are malicious or frivolous. These reports can cause great damage to a family, and there is currently no recourse open to the family.

We recommend that:

62. In the event that reports of child abuse or neglect are found to be malicious or frivolous, the Ministry must, on behalf of the persons negatively affected by the report, initiate civil litigation.

Apprehensions

Upon apprehension of a child, the Superintendent has the choice of either returning the child to his or her family or seeking a court order for custody of the child. The act provides that the Superintendent file a report with a judicial body within seven days, and that a judicial hearing be held within 45 days. In the interim, between apprehension and the court hearing, custody of the child is at the sole discretion of the Superintendent. At the hearing there is generally an adjournment of the proceedings and a date set for a full hearing of the merits of the apprehension. Given the nature of court calendars, it might be many months before the merits of an apprehension are heard in court. In the interim, between the initial hearing and the hearing of the evidence, the court may rule that interim custody be with the parent or with the Superintendent. The act provides no other options to the court.

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Through MSS she obtained counselling. In one session she advised the Counsellor that sometimes she was depressed. This was reported as a child protection concern. The Counsellor concluded that possibly she might be suicidal and do harm to her baby. The child was apprehended. The baby died that evening in a foster home.

She demanded the return of the other two children who had been voluntarily placed in care. They were returned to her. She sought legal counsel to take action regarding possible negligence in the death of her infant. Her other two children were apprehended.

"Provision must be made to enable the Heiltsuk Tribal Government to carry out all child welfare investigations with respect to complaints or charges of child neglect or abuse."

——— ***Heiltsuk Band Council***

"How do families ever pick up the pieces after being investigated?"

——— ***Metis Council of Alberni***

Her children heard about the Helpline from their playmates. One night, as a practical joke, they phoned the Helpline. Their phone call was treated as a complaint, and the Ministry sent

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Aboriginal families are particularly disadvantaged by this process. Family courts, unlike criminal courts, do not require the presence of duty counsel. While Legal Aid is available for child protection issues in Family Court, Legal Aid lawyers are not available in many remote communities and will only travel to the community for the full hearing of the evidence. Given the foreign nature of the Family Court system to Aboriginal culture, the limited options available to the Court, and the frequent lack of legal representation available to Aboriginal families at the initial hearing, it is common for the Aboriginal child to remain in the custody of the Superintendent for the many months it takes for a full hearing. Even in cases where the hearing determines that an apprehension was unnecessary, much of the damage to the child and family is already done.

We recommend that:

63. Family Courts must have a duty counsel available to families.

64. When a child is removed from his or her family, mediators must be available to mediate between the authority responsible for removing the child and the family.

65. A mediator must be appointed within seven days of the time that a child is apprehended unless the child is returned to the parent or guardian who normally has custody.

66. Families must be allowed to be heard by a judicial body on the question of the merits of the apprehension within 45 days of the removal of a child from their care.

67. In the event that an appropriate authority is applying for custody of the child, that authority must demonstrate to the court that all other options have been fully explored, including the option of having the offender removed rather than the child.

68. Before a judicial body can award custody to an appropriate authority, the report of the mediator must be considered.

69. In the event that an appropriate authority is seeking an order for the custody of the child, that authority must submit to the court a plan for the child, which includes details of the manner in which the family may

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out a worker to investigate. The worker assumed the responsibility to advise her on proper child rearing behaviour. She became defiant. Her defiance was viewed as a bad attitude towards the children. The children were apprehended. It took nine months for them to be returned.

"Mediation can be utilized in child protection matters."

Hazelton Child and Youth Committee

"If a child is apprehended, the child and family should receive intensive support and family counselling so that the child may be returned to the parent(s) as soon as possible."

Spallumcheen Family Services

There continues to be problems in the family, however as a family they have managed to remain intact. One child is now a parent herself, and both the child and grandchild live at home with him and the remainder of the family. His daughter, now 14 years old, has a boyfriend over whom the family has some

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be reunited, or the reasons why the family cannot be reunited. The plan shall also demonstrate the manner in which the child will maintain a connection with his or her Aboriginal culture.

The practice of apprehending children "for their protection", and the practice of placing a child in an alternative environment, are often separate processes. In many instances, this has led to a situation of removing children from the "frying pan" to place them in the "fire". The alternative placement has proved to be far more damaging for the child than anything experienced in the family from which the child was removed.

Because the Ministry staff are often not an intimate part of the community in which they practise, they lack a personal knowledge of who does and who does not present a risk to children. As a result, they rely on an investigation process to approve foster homes. Unless the prospective foster parent is a convicted pedophile, these investigations often fail to identify potential dangers to children. The chronicle of abuse of children in foster care is a testimony to this failure.

The lack of awareness of the children's need to maintain their cultural identity has resulted in numerous problems. In most cases there is also a failure to recognize the effects on the children themselves of removing them from their family.

Children grow up understanding that they belong with their families. They also grow up with an understanding that there is a criminal justice system empowered to apprehend criminals, remove them from their homes, and place them in institutions. As a result, when children are faced with being apprehended, they tend to equate these two factors, resulting in a belief that they are the cause of their apprehension. It is often the same municipal police and R.C.M.P. that apprehend both criminals and our children. This conception is reinforced by a process that further victimizes the children by dragging them through the court system to determine where they will be placed. In northern communities, it is further reinforced because northern Circuit Courts generally handle all proceedings: criminal, civil and family.

Even in situations where children have a clear understanding of the process involved in their apprehension, they react psychologically in a negative manner to all change, and particularly change that results in them not residing with their parents. Even in situations where a child loses a parent through natural causes such as death, there is a tendency for the child to feel cheated out of a universal right — the right to have parents.

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disagreement. One evening a fight broke out between the boyfriend and a brother. He intervened on behalf of the brother. The daughter called the Helpline and accused him and his wife of neglect. At 11:30 in the evening, when the family was sleeping, a social worker and three police cruisers and five constables arrived at the house with sirens blaring. They apprehended all of the children. One of the sons resisted apprehension and was injured. The daughter was placed in a foster facility with a number of other male children in care. She was sexually abused. The grandchild was apprehended, separated from its mother who was breast-feeding and became ill. None of the children were placed in Aboriginal homes.

"In many cases, no explanations were given to the children. The social workers at the time felt that what they were doing was in the best interests of the children. As a result, some of these young children grew up thinking they had done something wrong."

Shackan-Nooaitch Administration

"When apprehensions take place in . . . Parents are reluctant to give up their children to a social worker, police backup is called upon. It is not uncommon for the police to show up in three to four squad cars. This is totally unnecessary and unacceptable."

— L'ax Ghels Community Law Centre

As a result of all of these factors, there is a tendency for a child to act out the emotional stresses resulting from apprehension. In many cases, the apprehended child becomes the problem child or the self-destructive child.

Most alternative foster resources are simply not equipped to deal with these problems. It is not uncommon for foster relationships to break down. With each breakdown, the child experiences the same traumas of change and guilt. The guilt is reinforced because of the child's awareness that the acting-out behaviour played a role in precipitating the change. As a result, the breakdown of each foster placement has the potential of increasing the negative behaviour, and thereby enhancing the possibility of the next foster placement breaking down also. Numerous children told us that, when placed in alternative care that could not relate to their cultural or emotional needs, they would simply run away.

Another major source of problems for children in alternative care arises from the tendency for many foster parents to provide differential and preferred treatment to their natural children. The effects of this on the foster child are devastating.

"There needs to be a child advocate."

— Kamloops Indian Band

In order to ensure that decisions being made about children are "in the best interest of the child", every child removed from home must be represented by an advocate. The advocate would be responsible for ensuring the interests of the child are represented not only at the time decisions are made about the child, but throughout the remainder of the time in which the child remains out of his or her natural home.

The determination of who can best represent the interests of an Aboriginal child should lie with the elders of the clan or community of which the child is a member.

"The family of a child found in need of protection should have access to First Nations advocacy services or be able to appeal a First Nation protection intervention without being required to refer to court."

— Squamish Nation Council

We recommend that:

70. Any Aboriginal Nation or community that has an alternative dispute-resolution structure or a council of elders shall be requested to appoint an advocate for any child whom it is proposed to remove from his or her home by judicial process. The advocate shall be a party to all discussions of plans for the child, and shall have access to all records kept on that child. In the event that an advocate is not appointed in the manner prescribed, then the judicial body considering applications regarding the child shall appoint an advocate.

71. When a judicial body orders a child placed elsewhere than in the natural family, that order must be reviewed by that judicial body at least every year until such time as that child has returned to the family home or reached the age of majority.

72. Every child who is removed from his or her family home shall be considered a child with special needs, and resources must be made available to assist the child in coping with this change.

Placement of Children

Our intention in this report is to recommend a process whereby the removal of a child from his or her home is only done as an absolutely last resort. Furthermore, we recommend that, in most cases, where the removal of a child from his or her home is necessary, this decision be the result of a mediation process between the parents and the parties entrusted with ensuring the protection of children, with, wherever possible, a view in mind of returning the child to his or her natural home.

We recognize, however, that in some instances the removal of a child from his or her home might be the only course of action to protect the child. In the event that a child is removed from his or her home, the child must remain in as close a contact as possible with his or her extended family and community.

Under the present legislation, the Superintendent and the courts have one of two options: returning the child to the parent who normally has custody, or placing the child in an approved facility as a ward of the province. This process creates a situation in which the Ministry must act prudently for children who are their wards, or face potential liability for negligence. As a result, the Ministry has an extensive process for investigating approved facilities. These investigations are generally based on European standards, and make assumptions that conflict with Aboriginal values. For example, older people are seen as not being physically capable of managing children. As a result, it is very difficult for a child's grandparents to qualify as a foster resource. Previously, Aboriginal grandparents automatically assumed parental responsibilities when necessary; now they are almost always disqualified. Our values are again trampled upon. In our cultures, it was an honour to be raised by our grandparents. Now the onus is on the grandparents to demonstrate that they can provide suitable care.

"The resolution for a child protection concern should involve a mediation process."

—— ***Squamish Nation Council***

"Section 13 of the Act authorizes the court to return the child to the parent apparently entitled to custody . . . The Act does not authorize a court to place a child in the care of any other resource including . . . extended family members . . . "

—— ***Northern Native Family Services***

"A co-ordination of caregiving between a childcaring resource, extended family members, and parents . . . Such a co-ordination of childcare is a viable 'permanent plan' for a child and would not be considered extraordinary in an aboriginal community."

—— ***Squamish Nation Council***

The process of investigating alternative placement resources for children is a lengthy process, often made longer for Aboriginal applicants due to the lack of knowledge and to cultural bias of those non-Aboriginal persons responsible for developing and investigating such resources. Consequently, when an Aboriginal child requires alternative placement to the family home, the extended family is either disqualified or faced with an investigation process, often extending as long as two years before they become qualified. The result is that the child is removed from the family, because of a lack of an "appropriate approved" facility within the family.

"Upon apprehension, Heiltsuk children must be placed in our community and extended family will be given first consideration as a foster home."

— *Heiltsuk Band Council*

We recommend that:

73. All members of the extended family of a child coming into care shall be considered approved foster facilities, unless reasons exist to believe that the child will continue to be in need of protection when placed in their care.

"Most services provided within family and child services should be undertaken by agreement with the child's usual caregivers."

— *Squamish Nation Council*

The present process of decision-making about children in care tends to assume that if the parent is not capable of providing safe custody for the child, the parent does not have an ongoing interest in the child. As a result, the views of the parent on the placement of the child are usually not given any consideration.

"The entire family should be offered residential family support before apprehension of the child occurs."

— *Spallumcheen Family Services*

We recommend that:

74. In determining the placement of a child in care, the views of the parent shall be heard and given weight.

75. When a judicial body is considering an application by an appropriate authority to place a child in care, that body must demonstrate that, where appropriate, resources were made available to the child and family to prevent the need for the child being placed in care.

76. Where a decision is made to place a child in care, resources must be made available to the child and family to assist both in facilitating a plan of reunification.

77. All reports to court must be made available to all parties in a timely manner.

"What is at issue is the lack of specific legislation to make preventive and treatment services available to families who are at risk of having their children brought into care . . ."

— *Cowichan Band*

At present, the legislation permits children to be removed from their families only if they are in need of protection as defined by the act. However, when hearings are held concerning the placement of children, the criterion on which decisions are made is what "is in the best interests of the child". This factor is one of the main reasons why child protection complaints are often used in custody disputes in the event of a family breakup. Once the situation becomes an issue for the courts, even though both parents might be capable of providing adequate care and custody of the child, the question of "the best interests of the child" becomes the determining factor. For the Aboriginal community, this factor has become a major reason for placing our children in the long-term care and custody of non-Aboriginal caretakers. A child is removed from the home inappropriately or due to a short-term, resolvable problem, and placed with non-Aboriginal caretakers. Long periods of time pass before the judicial hearing on the merits of the apprehension. At the hearing itself, the court hears arguments on a comparison of the Aboriginal family home and the non-Aboriginal foster facility, and is asked to decide on what "is in the best interests of the child". Given the relative poverty of our people, and the heavy European cultural emphasis on material well-being, decisions are often made in favour of the non-Aboriginal caretakers that are in no way connected to the question of whether or not the child is in need of protection.

We recommend that:

78. When judicial bodies are considering applications to place an Aboriginal child in care or continue to maintain an Aboriginal child in care, before determining the placement of a child, the judicial body shall make its decision solely on the basis of whether the child is, or continues to be, "in need of protection".

Present legislation with respect to children is based on a European assumption that a child born to one family can, through adoption, become the child of another family. Present legislation provides for a change of the child's name, and a complete disassociation of the child from his or her natural family.

The idea that a child can be someone other than whom that child was born completely violates our culture and is in violation of the United Nations Convention on the Rights of the Child. Denying a child knowledge of, and access to, his or her natural family has had tragic consequences for our children. We have found that, in most cases where our children have been completely removed from their communities and families, as adults they eventually find their

"It is recommended that the moratorium [on adoptions] cover all First Nations people and that the Act entrench a moratorium on the adoption of First Nation children."

Northern Native Family Services

"Many adopted children may not even be aware of their Indian ancestry."

Kamloops Indian Band

"When children come back to the community as young adults they feel as if they are strangers, and they have a difficult time adjusting to the community."

Shackan-Nooaitch Administration

"The Act is also silent to access by parents upon a permanent order being made. In many situations ongoing access by a parent to a child permanently in the Superintendent's care is in the best interest of the child."

Northern Native Family Services

"In practice, visitation is not granted to the parents, or nuclear family, or extended family, once the child becomes a permanent ward."

Kamloops Indian Band

"Alternatives to permanent wardship need to be considered."

Kamloops Indian Band

" . . . we wish to advise you that the Gwa'Sala-'Nakwaxda'xw Council have placed a moratorium, for an indefinite period, on child adoptions involving Gwa'Sala-'Nakwaxda'xw people."

— *Gwa'Sala-'Nakwaxda'xw Council*

"We are opposed to the adoption of our children out of our communities with a consequent loss of their culture and heritage."

— *Pacific Metis Federation*

She was a single parent in her mid-twenties. She had some problems with alcohol. She was a victim of child sexual abuse. She sought help, and entered a treatment program, a life-skills program and an employment re-entry program. She was getting her life back together, but was away from home most of the time in these various programs. She voluntarily put her children into care. The six month limit for children being voluntarily in care was reached. Her healing programs were still under way. She was given the option to drop her programs and resume full-time care of the children, or face a court ordered apprehension.

way home. They return home, however, as "walking wounded", carrying tremendous emotional scars from this denial of their identity. They often experience a complete lack of belonging, either to the community in which they were born or to the community to which they were abducted.

The present legislation provides that a judicial body can order either the temporary placement of a child in the care of the Superintendent or in a permanent placement. Permanent placement orders are generally the first step in a process of seeking an adoption placement for the child. With permanent placement, the goal of reuniting the family is discarded, and in most cases provisions for maintaining connections between the child and his or her extended family are severed.

We recommend that:

79. All legislation must be removed that would allow a judicial body to place a child permanently outside the care of his or her extended family.

80. The *Adoption Act* must be amended to eliminate all possibilities of a child being denied knowledge of his or her identity, and the identity and whereabouts of his or her extended family.

81. In the event that an Aboriginal child is removed from the home of his or her natural parents and placed in another home within the Nation, it must be possible to extend the order of temporary care of the child for as long as is necessary for the natural parents to resolve the problem which resulted in the removal of the child. Such extensions shall be in increments of no longer than one year.

At present, the federal *Indian Act* recognizes custom adoption by Aboriginal families. Provincial law does not. As a result, in situations where a child might benefit as an adopted child under provincial statutes (such as the *Crimes Compensation Act*, the beneficiary of an estate of parents killed in an automobile accident, etc.), the child is denied benefit because the custom adoption is not recognized. Custom adoptions are characterized by the consent of the parents and the ongoing ties between the child and his or her extended birth families.

We recommend that:

82. **Provincial legislation must recognize Aboriginal custom adoptions involving Aboriginal children and an adopting Aboriginal family.**

83. **Legislation must recognize no other forms of adoption of an Aboriginal child other than custom or open adoption by an Aboriginal family.**

At present, it is possible for a parent to place a child voluntarily in the care of the Superintendent. Legislation provides that this placement must be for a period of no more than six months, at which time the child must be either returned to the parent, or placed in the care of the Superintendent through a court order. As a result, if a family is experiencing difficulties that make it unable to care for any or all of its children, this problem must be corrected within six months, or the family loses all control over the decision-making process for its children.

We recommend that:

84. **Legislation must provide for the voluntary placement of children in care of the Superintendent for as long as it takes for the family to resolve the problems that it is facing.**

At present, a parent may sign a voluntary consent that would allow the Superintendent to place a child for adoption. Having signed that consent agreement, the parent loses all rights to decisions concerning that child. There have been many instances in which these agreements have been signed and the subsequent adoption either has not materialized or has broken down.

We recommend that:

85. **In the event that a parent or guardian voluntarily consents to his or her child being placed in an alternative home in the care of the Superintendent, or through adoption, and that alternative home or home of the adoptive parents is unable to provide for the care and custody of that child, the consent agreement signed by the parent or guardian shall be considered void and the child shall be returned to the parent or guardian.**

"The Ministry should relinquish any involvement...in Indian adoptions."

—— *Kamloops Indian Band*

"Squamish Nation children who are orphaned or in need of longterm planning, can be adopted through Squamish custom adoption."

—— *Squamish Nation Council*

She was 15 years old and pregnant. The social worker believed that she would have trouble raising her child and attempted to convince her that the best option was adoption. She resisted this, gave birth and began raising her child. There was never a suggestion that child was not properly cared for.

When the child was seven months old, the social worker identified a member of her extended family who would provide a good adoption home for the child. She reluctantly agreed, knowing that if the child was with her extended family, contact would not be lost, and she would eventually be able to assume much more of a parental role.

During the adoption probation, the relationship in the adopting family broke down, and the child was returned to MSS. Now she is 18 and living in a stable environ-

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ment, she applied for custody. This was denied. She was treated as any other foster resource, and forced into the process of qualifying. During the ensuing two years, the child was placed in a non-Aboriginal foster facility while she leaped through the numerous hoops before it was agreed to return the child to her.

Present adoption laws have resulted in the sealing of adoption records. This process denies children the right to know who they are, and violates the United Nations Convention on the Rights of the Child.

We recommend that:

86. With respect to Aboriginal children, adoption records must be made available to the body generally considered as representing the child's Nation or community and that body must be empowered to determine the best course of action to assist that child in re-establishing his or her identity.

Liberating
Our Children
•
Liberating
Our Nations

Family Violence and Abuse of Children

Family Violence and Abuse of Children

We have pointed out earlier that the effects of the colonial nature of Canadian law have removed women from their place of protection in Aboriginal tradition, and left them at the mercy of their spouses. Cultural values, based on a matrilineal system and a respect for women, have been eroded by authoritarian and paternalistic attitudes. The escalation of family violence in Canada is mirrored in the Aboriginal community. Male chauvinistic attitudes of a male prerogative to control "their women", with force if necessary, has become part of Aboriginal life.

We do not believe that this situation can be changed by legislation alone. It is only through the rebuilding of our cultural values of respect and consent that we can purge our Nations of these attitudes.

In the meantime, however, there are legislative actions that can better protect women from family violence and abuse.

We recommend that:

87. When decisions are being made by judicial bodies concerning the custody of children, the traditional matrilineal and clan structures of Aboriginal Nations and communities, where applicable, shall be considered a factor.

88. In instances in which violence by an estranged husband against his estranged wife has been a factor in their relationship, the physical well-being and safety of the estranged wife shall take precedence over the father's right of access to any of the children.

89. In the event that a child is conceived as a result of involuntary intercourse, the father of that child shall have no rights to access or custody of the child; however, he may be held financially responsible for the cost of maintaining the child.

90. Each Aboriginal Nation or community shall be provided with the resources necessary to create a safe haven for women and children who are the victims of family abuse. Decisions regarding the location and administration of those safe havens shall rest with the women of that Nation or community.

"In the matrilineal cultures of this area the children belong [with] the mother, the mother's family, her clan and her Nation."

Northwest Band Social Workers Association

" . . . solutions regarding First Nations children and their families include crisis lines and safe houses for First Nations people, run by First Nations people."

Saanich Indian School Board

Present regulations in the *Family Maintenance Act* often require a woman to pursue financial support from her spouse as a precondition to qualifying for provincial or federal financial assistance. This requirement often forces a woman to reveal her whereabouts to her spouse, thus putting herself at risk of further abuse.

We recommend that:

91. **In instances that would endanger the physical well-being of a woman or her child, requirement to pursue maintenance from her estranged spouse as a condition of eligibility for other financial resources or services to which they might otherwise be entitled must not compromise the anonymity of her present whereabouts.**

We would be remiss in this report if we failed to address the very complex issue of the sexual abuse of children. There are many factors contributing to the contemporary escalation of the sexual abuse of children, a virtually unknown phenomenon in the traditional life of our ancestors. The constant promotion of people as sex objects in today's commodity market society has encouraged children to be seen as sex objects. The near fanatical emphasis on youth as preferable sex objects and the popular equation of masculinity with sexual conquest have also contributed. The European "macho" stereotyping of the acceptability of exercising power and control over people, reinforced by a paternalistically dominant society, cannot be overlooked. Our cultural values have been eroded by these foreign values, which have created a milieu in which the internalized moral prohibitions against the sexual abuse of children have been undermined.

For our people, the mistreatment in residential schools and non-Aboriginal alternative caretakers' homes has blurred the normal limits of family relationships, love and sex. These experiences have further eroded the internalized prohibitions against the sexual abuse of children.

"We must concentrate on healing rather than on punishing."

Usma Nuu-chah-nulth
—— Family and Child Services

In the last several years, the growing awareness of child sexual abuse has resulted in encouragement for the victims of child sexual abuse to come forward and disclose the abuse. While this is a healthy process for the victim (being the first necessary step in their healing), in many Aboriginal communities the resources necessary to deal with the aftermath of such disclosures do not exist. Therefore, the disclosures have traumatic effects on the family and the community, who are left to their own devices to deal with the trauma. Sharp increases in family violence and suicide are often the result.

We recommend that:

92. **Aboriginal Nations and communities must have the resources to address the problems that result from disclosures of sexual abuse.**

We do not believe that the problem of sexual abuse can be fully resolved without a complete restoration of our cultural life and tradition and an economic base from which our cultural life can be nourished and gain independence. Meanwhile, there are steps that can be taken to reduce the sexual abuse of children. First, it is necessary to differentiate between sexual abuse of children by people outside the victim's extended family and social community, and those abuses that take place within the family structure. The latter form of sexual abuse and incest is much more complicated to deal with as it often results in alliances with the offender within the family, resulting in a further victimization of the child.

Due to the complexity of the problems of dealing with the sexual abuse of children within families, it was not possible for us to develop a consensus on solutions to this problem. This problem might, indeed, require a study of its own. However, such a study would encourage disclosures and, therefore, communities must have the resources to deal with these disclosures before they are encouraged.

Two principles emerged from our consultations. First, the process of dealing with offenders must not, in itself, further victimize the victims. Secondly, the emphasis must move from one of punishing the offender to one of treatment, within the context of the best interest of the safety of our children.

With these emphases in mind, we are making the following recommendations as a means of encouraging a discussion of these issues.

The present system of dealing with sexual abuse of children is based on the European approach of externally coercing acceptable behaviours. Emphasis is placed on punishing the offender rather than on treating the victim. Offenders are incarcerated, if sufficient evidence exists, and returned untreated to their community to abuse again. Victims are usually the principal witnesses and are therefore forced to relive the abuse they suffered through many re-tellings — first to the social worker, then to the police, then to the prosecutor, and finally to the court, often several years later. Treatment that might taint their evidence is regularly withheld until the offender is convicted.

The victim is often further victimized by the guilt accompanying disclosing the abuse by another family member and knowing that the disclosure will result in the incarceration of that person. Strong family alliances often conspire to pressure the victim not to disclose the abuse, resulting in ostracization of the victim or threats of violent retaliation if they proceed with the disclosure. The threat of incarceration generally mitigates against the offender voluntarily seeking treatment.

We recommend that:

93. If a child victim of sexual abuse is of age to form a valid opinion, and the expression of that opinion will not negatively affect the victim, the views of the victim must be considered in whether criminal charges are laid and on sentencing.

94. If the victim is not of age to form a valid opinion or if the expression of that opinion will negatively affect the victim, then the views of the parents of the victim must be considered in whether criminal charges are laid and on sentencing. In the event that one of the parents is the offender, then the views of the parents of the non-offending parent, if available, must be considered.

95. The videotaped disclosure of a child victim of sexual abuse should be admissible as evidence in a child sexual abuse trial.

96. Healing resources must be available to victims of sexual abuse and to other members of their families, regardless of the effects of such treatment on subsequent evidence that might be required in a sexual abuse trial.

97. For first-time convictions of sexual abuse, courts must be in a position to offer the offender extensive treatment as an alternative to long-term incarceration, after considering the views of the victim as recommended in this report.

98. The voluntary disclosure of sexual abuse by the offender for the purpose of obtaining treatment shall not be used as evidence against the offender in the same manner that witnesses are protected from self-incrimination under the *Canada Evidence Act*.

The federal Department of Indian Affairs provides some resources to treat sexual offenders. These resources are only available if an offender is convicted. Otherwise, treatment is not available.

We recommend that:

99. Culturally appropriate treatment must be available on demand to all sexual offenders, whether they have been convicted or not.

One of the major problems of sexual abuse of children is its cyclical nature. Many sexual abusers were themselves victims of sexual abuse. For many victims of sexual abuse, their acting-out behaviour as adolescents involves sexually abusing other children younger than themselves. Because such abusive children also are often problems for the system of providing "child protection", their acting-out behaviour provides an opportunity to remove them from the "child protection" system by criminalizing them. In this manner, the victim becomes the offender and then again becomes the victim.

We recommend that:

100. Adolescent victims of child abuse must not be criminalized for acting out sexual behaviour unless that behaviour is accompanied by other criminal behaviour such as sexual assault. Culturally appropriate treatment must be provided to these children.

He is 15 years old. He was sexually abused as an infant. He was sexually abused again when he was nine years old. His parents are separated. His father beats on him severely. His mother and his mother's boyfriend also beat on him. In one interview his mother pulled his shirt off and showed the red welts on his back stating, "Look what he makes me do to him." He is a problem child, who is acting out the effects of this abuse. He has been in numerous voluntary foster situations. They have not worked out.

He was discovered sleeping with his 12-year-old girlfriend. He has been referred to the criminal justice system.

Present child sexual abuse prevention practice automatically prohibits the publication of the names of sexual offenders if such publication will identify the victim. In many Aboriginal communities, when criminal charges are laid for sexual abuse of children, the names of the offender and victims are readily known. As a result, the prohibition against publishing names protects only the offender and leaves other children more vulnerable to abuse by that offender.

We recommend that:

101. Unless the publication of the name of a sexual abuser of children presents a real problem to the well-being of the victim of that offender, the convicted offender's name may be published.

102. Known sexual abusers of children must be denied positions that would give them unsupervised access to children.

Liberating
Our Children
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Liberating
Our Nations

The Perspective of an Elder

Roy Haiyupis

The Perspective of an Elder

May 28, 1992

The Usma Nuu-chah-nulth Family and Child Services program has a mandate from the Nuu-chah-nulth ud H with a self government accent which says "give me the responsibility for my family and the welfare of my children."

The mandates indicated at the outset, were that our people wanted to see our children back home in relatives' homes, and that they did not want to see them placed in non-native homes of different cultures. The predicament to date from the outset of the Usma program is that we are expending the Nuu-chah-nulth family resources for the placement of our children under apprehension. The indication may be that there is a growing list of apprehensions for various social reasons. The other aspect is that there may yet be enough homes that can be used for resources for placement of foster children, given the opportunity for an upgrading of their family skills. Gradations in this respect may also give participants the vision and self-esteem to carry on in continuing education to facilitate the requirements of the special needs group of children in our population. There are presently programs in progress for the development of life skills which have helped and are helping Nuu-chah-nulth ud H to a large extent. Special human developmental packages are again also in progress to upgrade the skills of our people employed in our human services programs. These may be considered as introductory modules which can lead to training in social work for those who may be interested.

Another mandate from the elders of the nation in particular was for the program to develop humanistic guidelines and policies to reflect our traditional practices and philosophies for child care. This issued from the statement that "the highest Nuu-chah-nulth law is the protection of the children." This statement says a lot in that all aspects of the child's human self, physical, mental, environmental and spiritual, demand total respect. Within this there was a constant awareness of and attention to the children's emotions which needed to be kept in balance as the child grew. There is no healthy growth without attention to the balanced state of the child's emotional self.

For us this is one key aspect needing particular stress within the context of our negotiations on self government.

So again, within the mandate for the development of humanistic guidelines, it is important for the program to constantly recognize the impact on the child's encounter with and emotional reaction to change. It may very well be that the emotional consequence encountered by the child may remain with him for the rest of his life. Technically, and psychologically, under any program, this needs to be dealt with. Our program has no service to counsel the child in this circumstance. Neither do we have a program to direct counselling to the foster parents. Under the terms that we are saying that the highest Nuu-chah-nulth law is the welfare of the child, then we recognize that we need to meet these needs for human development which can be assets to lead us to the development of an effective program. No related service within our services must be isolated from the whole.

One other fact reacted to by the elders of our nation was that under the terms of the possibilities of serious emotional and psychological damage that the child should not be forbidden continuing visitation rights despite any dysfunctions in his family. At all times, there needs to be a clear understanding by the child that he will return home once his family is rehabilitated. To our people it is important that there be a rehabilitation facility and service available to all those in distress in the interests of the child.

Change can be a heavy emotional drain and strain for anyone, young or old. When a child does not have those life skills convenient to adapt to the emotional strains of change, then even the simple fact of a family move will leave its impact. Over the past few decades we see evidence of the impacts encountered by tribes moving from one location to another. We must wonder what emotional encounters the child must experience in moving from one location to another, from one family situation to another, or from one school to another. Who does the child find to develop trust in any new location or situation? What friendships have been severed for him? What opportunities has the child had to develop his life skills, his communication skills, his self-esteem and confidence to adapt and fit him to change and a state of readiness for his encounters in a new world? Is SUICIDE one of the impacts of incompatibility to change? This is a drastic question we must wrestle with today.

Thrusting CHANGE on the child is never easy and affects the emotions that can be detrimental to the child...we see evidence of this in our society in relating to cases across the country, the Richard Cardinal case is not an exceptional case in point. There are many others that we can name. And I am sure that there are multiple indicators pointing to the effects of CHANGE which we have not addressed yet, but which I hope we may eventually deal with. The compulsion to deal with those questions before us as a society are now before us. The how and when need to be determined now. The ways and means for a positive re-development of the Nuu-chah-nulth ud H family has to become the concern of the province if but in a fiscal sense. We see the development of family skills as our responsibility on the home scene. If there is no move to curtail the parental slippage on the home front, then we have no hope for the reversal of the continuing trends of parental separation, abandonment of responsibility for the child, neglect of the child, abuse of the child and so on, and the case loads under care, in foster homes and elsewhere will continue to escalate.

With the need to upgrade the parental skills in the home, I believe we are able to move in a positive direction in the interests of the child. The parent needs guidance in the earliest stages of the delivery of traditional values. This has to be our first step in helping the parent with the daily need to be involved with the need for a development of traditional values in both parent and child. This parent and child relationship needs to coincide with the introduction and learning process to the extent of the child's needs in the first year or two of classroom experience. Pursuing the validation of the child's emotional balance within a context of stress under new learning conditions has to be the initial goal. This engraves qualities in the child through guidance in the early years within a positive preparatory stage especially being with the person he most trusts and cherishes. This relationship also engenders and supports the creativity and innovativeness of the child. We need this firm emotional growth to help us build and sustain a healthy social growth.

To me, it is important to note the need for a balanced emotional growth, a deep sense of responsibility and a firm sense of identity. The child needs that quality of support and what better support than the parent who also must be enriched in traditional family values. The training of one relates to the other and should never become movements and services isolated from each other. That is our traditional way of raising, teaching and training the young. We must not ignore the opportunity to be human and become a part of a system that continually breaks the relationship cycle of development in the interests of the child.

The reality of the need for implementing human values indicates the need for "local control" of the Usma Family and Child Services, much as the process and movement across this country concerning the "control of the education of our children". The control of our Family and Child Services is the key that should lead our people toward successful living. I believe our young generations are preparing themselves and some are prepared at this stage to take on the challenges given the opportunities.

The bottom line is that in striving for self government and liberating ourselves from the state of dependence that exists in our communities because of the continuing outside government controls on us that were introduced and instituted through legislation and legislated amendments for control of children within the context of the residential schools, we need to be given the liberty and right to control our own institutions, meaning schools, courts, health systems and child welfare including practical funding and resources. We need liberty to be ourselves because we can never be anyone else. We need that liberty particularly given back to us within the context of and inclusive with the total package on the recognition of self government. I can assure you that given this liberty our people can become less of a continuing "problem" as you indicate at the provincial and federal governments. We need our own people to do the things that we need to do for ourselves. Professional status delivery has proven inadequate. We need liberty to be ourselves because we can never be anyone else especially without a clear understanding of the needs for a re-development of our cultural values. "Understanding" is the key word here that overrides academic professional qualities from the perspective of our Nuu-chah-nulth elders. The underlying philosophy of the provincial Family and Child Services, to the elders, appears to be totally contrary to our Nuu-chah-nulth traditional family values. That is the very basic key that our elders rebel against. To add to this is the place of the Canadian Justice system in delivering judgements that have to do with the welfare and interest of the child. The system that needs to make decisions to favour the child to promote a continuity of healthy emotional growth. Change affects the continuity of the process of the growth of the children. Change into a different cultural environment has proven drastic to many of our children. We know now more than ever that the responsibility for the recovery of our dysfunctional families lies with us. That must happen today within the context of self government to lighten the load on the rest of the country. We need to be given the opportunity to redeem ourselves from the problems of the present and the past within the context of the infiltration of governments that were alien to us. These were governments who were representative of the people who our ancestors trusted. The effects of that misplaced trust has been too drastic on our people. We now recognize more than ever that the reality is that our systems of government were more realistic for our purposes. There are assets and resources and privileges and rights that have been withdrawn from us. That needs to be rectified by whatever resources this government will allow us to access with hopes for a deep recognition that the NDP is the main political party that we have always had a good rapport with and continue to support. We simply ask for your confidence in us to deliver a family and child services program for our people with every hope that ours might become a model for other communities in B.C.

Roy Haiyupis

Roy Haiyupis

Appendix 1: Recommendations

Appendix 1
Recommendations

Transition Back to Aboriginal/First Nations Law

Colonial Legislation and the Inherent Right to Self-Government

1. All legislative changes regarding Aboriginal family life must be developed in the context of strengthening the right of Aboriginal people to exercise our inherent right to self-government.

2. Changes to family and child protection legislation must be seen only as an interim measure which will be fully resolved through the recognition of the paramountcy of Aboriginal family law.

3. All legislation and agreements dealing with Aboriginal family and child legislation, policy and practice must include explicit statements guaranteeing that the intent of the legislation and/or agreements does not abrogate or derogate from existing Aboriginal rights, or rights that might in the future receive constitutional protection.

4. Provincial legislation must explicitly acknowledge the jurisdiction and responsibility of Aboriginal Nations to make decisions, and resolve problems with respect to issues of Aboriginal families and children.

Aboriginal Family and Children's Services

5. Government must recognize the right of Aboriginal Nations to define their citizenship. In developing a structure to define citizenship, Aboriginal Nations must ensure an impartial process through which individuals who are denied citizenship are given a fair opportunity to appeal such decisions.

6. Governments must recognize the right of each Aboriginal Nation to extend its responsibilities for family and child services and decision-making to all members of that Nation, whether they are registered as Indians or not, and whether or not they reside on or off land reserved for Indians, in accordance with the aspirations of the Aboriginal people who comprise each Nation.

7. Governments must recognize the rights of Aboriginal communities that are enclaves in non-Aboriginal communities to assert their responsibilities for family and child services and decision-making in accordance with the aspirations of the Aboriginal people who comprise those communities.

8. Governments must acknowledge the right of each Aboriginal Nation or community to form its own child and family services agency.

9. The structure of those agencies shall be determined by the Aboriginal Nation or community involved, in accordance with the cultural, social and political needs of that Nation or community. Legislation must acknowledge the right of each Aboriginal Nation to act collectively as guardians for a child who is a member of that Nation.

10. An Aboriginal family shall be defined as any family in which at least one parent is of Aboriginal descent, and which generally associates itself with an Aboriginal Nation or community.

11. An Aboriginal child shall be defined as any child of an Aboriginal family.

12. Legislation must compel the provincial government to recognize the right of an Aboriginal Nation or community to assume decision-making authority for all, or any part of, the administration of the *Family and Child Service Act* through an agency that is mandated by an Aboriginal Nation or community to undertake that responsibility.

13. The decisions on a timetable and schedule for an Aboriginal agency to assert its decision-making responsibility over all, or any part, of the administration of the *Family and Child Service Act* shall lie solely with the Aboriginal Nation or community involved.

14. Agreements with Aboriginal Nations or communities to phase in responsibility over family and children's services must contain a clause that clearly states that the agreement does not derogate from the right of that Nation or community to assume full responsibility and jurisdiction.

Appeal Mechanisms

15. Where Aboriginal Nations or communities have developed appropriate alternatives to the Family Court for family dispute resolution, appeals regarding decisions made under the *Family and Child Service Act* must be referred to that dispute-resolution structure.

16. An appropriate dispute-resolution structure would be any structure, designed and mandated by the Nation or community for the purpose of resolving family disputes and making decisions regarding the care of children, that provides protection against conflicts of interest and protects the rights of the women, children and individuals within the context of the rights of the collective.

Healing the Wounds

Principles of Financing

17. In recognizing the jurisdiction and responsibility of Aboriginal Nations or communities in the area of family and children's services, governments must provide an adequate level of financial resources for the Nation or community to undertake those responsibilities.

18. Legislation must guarantee an adequate level of financial resources to Aboriginal Nations or communities that undertake jurisdiction and responsibility for family and children's services, and that the level of financial resources must guarantee that Aboriginal Nations or communities have the capacity to develop and maintain a level of services comparable to those available in non-Aboriginal communities.

19. Commitments to Aboriginal Nations or communities must be on an ongoing basis rather than an annual project-to-project basis.

20. In determining an equal level of services to the Aboriginal community, governments must not assume that universal, non-Aboriginal services are accessible to the Aboriginal community.

21. The process established by an Aboriginal Nation or community must be acknowledged as the only process that plans and identifies needs in all of the areas directly connected to, and ancillary to, the well-being of the families and children comprising that Nation or community.

22. Federal and provincial governments must compensate Aboriginal communities for the negative effects of the residential school program and the process of apprehending Aboriginal children and removing them from their communities.

23. Government must guarantee the availability and accessibility of services when those services are required by a judicial order to keep a family intact or to reunite the family.

24. Financial arrangements with Aboriginal agencies must ensure equity both in the level of services and in the remuneration to employees and alternative providers of child care.

Preventative Services

25. Legislation must guarantee that a child shall not be removed from his or her family solely because the child requires support services.

26. Any child in need of support services must be considered a child-in-need of support, and financial resources must be made available to provide the supports needed by that child within the context of the child's family.

27. The goal in the provision of all social services must be the unity of the family structure and, to the greatest extent possible, financial resources must be available to maintain the integrity of all families.

28. While 18 should be the maximum age at which guardianship may be exercised over a child, the age at which a child is eligible for services must be established on a flexible basis that takes into account the specific needs of each child.

29. Aboriginal Nations and communities must have the ongoing financial resources to implement a wide range of preventative services that are wholistic and unfragmented. The services must be available in a culturally appropriate manner, as determined by the specific Aboriginal Nation or community, and delivered by people from that community.

30. Each Aboriginal Nation or community must have the ongoing resources necessary to develop and operate wholistic healing centres capable of addressing the mental, physical and spiritual needs of the people it serves.

31. For single-parent Aboriginal families, respite and homemaker services must be available universally and on demand.

32. Daycare for Aboriginal children must be universal and available on demand both off and on reserves.

33. Aboriginal communities must be in a financial position to offer a variety of services, including family support, counselling and re-establishing appropriate parenting.

34. Aboriginal family drug and alcohol treatment programs must be available in each Aboriginal Nation or community. These services must be wholistic and culturally appropriate, dealing with all of the related problems and not simply the abuse symptoms.

35. Each Aboriginal Nation or community must have the financial resources to provide suicide prevention services, as well as post-suicide counselling and support services.

36. Financial resources must be available so that every Aboriginal community can provide recreational facilities, educational opportunities and cultural, travel and exchange activities comparable to those available to the non-Aboriginal community in British Columbia.

37. Extended families of children with special needs must be provided with the resources necessary to meet those special needs.

Acquiring and Sharing Knowledge

38. Governments must make resources available to Aboriginal Nations and communities to develop methods of replacing non-Aboriginal standards with culturally appropriate methods for sharing knowledge and providing care.

39. The Ministry of Advanced Education must begin an immediate process of consulting with Aboriginal communities to determine their education needs, to determine the optimum method of meeting those needs, and to ensure that educational achievements are adequately accredited.

40. Aboriginal Nations and communities must be in a position to design methods of sharing and expanding knowledge so that these methods are culturally appropriate to Aboriginal life, and so that it is possible for Aboriginal communities to employ their own people to meet their needs.

Internationally Recognized Rights of the Child

41. Entities that have the responsibility for the protection of children, and judicial bodies empowered to make decisions regarding the custody and guardianship of children, shall ensure that those children are not denied the right to know their birth name and the names of their birth parents.

42. With respect to the care of a child, the child's birth parents shall always be seen as the most desirable providers of that care. Where the circumstances require the removal of that child from his or her birth parents for the protection of the child, the goals of any plans made for the child must include the reunification of that family, wherever possible. Where not possible, the relationship between the child and his or her birth parents must be maintained, except in situations where such a relationship will result in the physical harm of the child.

43. In cases where neither of the birth parents will or can provide safe care of the child, the extended family of that child shall be considered to be the next most appropriate source of care.

44. In cases where neither of the birth parents nor the extended family will or can provide care of the child, other members of the child's Aboriginal Nation shall be considered to be the next most appropriate source of care.

45. Where judicial bodies empowered to make decisions regarding the guardianship, care and custody of a child are deliberating such decisions, the birth parents, any member of the extended family present, and the political body representing the child's Aboriginal Nation or community shall all be seen as parties to those deliberations, and shall have the right to be heard in those deliberations and weight shall be given to their opinions.

46. In the event that an Aboriginal child has been removed from the care of members of the child's Aboriginal Nation, those entities responsible for such removal shall turn over to the political body representing that Nation, all records describing the reasons for removal and the present whereabouts of the child.

47. The provincial government must begin negotiations with other Provinces, with the United States of America, and with any other country, where applicable, to establish protocol agreements that will facilitate the return to the care of their Nation all Aboriginal children who are not in the care of members of their families. These protocol agreements must also cover children who might come into the care of some other jurisdiction in the future.

48. Where requested by that Nation, or the family of the child, governments must make all reasonable efforts to ensure the reunification of that child to the care of members of the child's Nation and, must provide assistance in ensuring that reunification.

49. In the event of such reunification, the government must provide resources to assist that child, family and community to adjust to the reunion with the Aboriginal Nation from which the child was removed.

50. The process for registering Indian children at birth must be part of the same process by which their birth is registered.

51. A child who is capable of forming his or her own views shall be given the opportunity to be heard at any proceedings affecting his or her care and custody and shall have the right to initiate proceedings to review those decisions, including the right to initiate proceedings to change his or her guardianship; and his or her views shall be given weight in any ensuing deliberations.

Ending the Legalized Abduction of Aboriginal Children

Paramountcy of Aboriginal Law

52. Upon request from any Aboriginal Nation or community, all of the responsibilities and jurisdiction vested in the Superintendent of Child and Family Service must be vested in that Aboriginal Nation or community so requesting, on a timetable determined solely by that Nation or community.

53. When Aboriginal Nations enact their own laws with respect to families and children, provincial legislation must acknowledge the paramountcy of these laws with respect to any provision of the *Family and Child Service Act*, the *Family Relations Act*, the *Adoption Act*, the *Infants Act*, the *Public Trustee Act*, any subsequent amendment to any of those acts, and any legislation involved in the enforcement of those acts.

54. In each Aboriginal Nation or community in which the Ministry is exercising jurisdiction under the *Family and Child Service Act*, the Ministry must enter into an agreement with that Nation or community. That agreement must acknowledge the areas of jurisdiction and responsibility that the Aboriginal Nation or community wishes to exercise. It must detail a plan by which areas of temporary jurisdiction exercised by the Ministry will be transferred to the Aboriginal Nation or community, and a timetable for doing so. The agreement must also detail the provisions of financial resources from non-Aboriginal government to the Aboriginal Nation or community to enable the Nation or community to undertake the responsibilities identified in the agreement.

55. Each agreement must contain a clause clearly indicating that the intention of entering into the agreement does not constitute an acknowledgement of provincial jurisdiction in Aboriginal family life, and does not abrogate or derogate from any existing rights of Aboriginal people.

56. The Ministry of Social Services shall extend the present legislative review process to ensure that there is an ongoing monitoring of the implementation of the recommendations in this report, and shall review their effectiveness from the perspective of Aboriginal people.

Children in Need of Protection

57. The *Family and Child Service Act*'s definition of "children in need of protection" must differentiate between children who are in immediate danger in their present environment and children who would suffer in the long term if an intervention did not occur, in order that the family can be afforded the protection of due process or the alternative of a mediated intervention where this would not endanger the child.

58. Unless there is a real and immediate danger to the well-being of the child, the child cannot be removed from his or her home without an order from a judicial body.

59. Judicial bodies must be able to order the removal, from the home, of the person presenting a threat to the child, rather than removing the child.

60. Unless a birth parent presents an immediate and real danger to the well-being of his or her child who has been removed from the home, birth parents must be allowed the greatest reasonable amount of unsupervised access to the child.

Complaints and Investigations

61. In the event that the Ministry receives a report or complaint of an Aboriginal child being in need of protection, the ministry must:

a) if the child is from a Nation or community that has an entity in place to investigate reports of children in need of protection, turn over the information received by the Ministry, and the responsibility for investigating the complaint to that entity;

b) if the child is from a Nation or community that does not have such an entity in place, notify the body generally considered to represent that Nation or community about the nature of the report or complaint, and determine a course of action in conjunction with that body.

62. In the event that reports of child abuse or neglect are found to be malicious or frivolous, the Ministry must, on behalf of the persons negatively affected by the report, initiate civil litigation.

Apprehensions

63. Family Courts must have a duty counsel available to families.

64. When a child is removed from his or her family, mediators must be available to mediate between the authority responsible for removing the child and the family.

65. A mediator must be appointed within seven days of the time that a child is apprehended unless the child is returned to the parent or guardian who normally has custody.

66. Families must be allowed to be heard by a judicial body on the question of the merits of the apprehension within 45 days of the removal of a child from their care.

67. In the event that an appropriate authority is applying for custody of the child, that authority must demonstrate to the court that all other options have been fully explored, including the option of having the offender removed rather than the child.

68. Before a judicial body can award custody to an appropriate authority, the report of the mediator must be considered.

69. In the event that an appropriate authority is seeking an order for the custody of the child, that authority must submit to the court a plan for the child, which includes details of the manner in which the family may be reunited, or the reasons why the family cannot be reunited. The plan shall also demonstrate the manner in which the child will maintain a connection with his or her Aboriginal culture.

70. Any Aboriginal Nation or community that has an alternative dispute-resolution structure or a council of elders shall be requested to appoint an advocate for any child whom it is proposed to remove from his or her home by judicial process. The advocate shall be a party to all discussions of plans for the child, and shall have access to all records kept on that child. In the event that an advocate is not appointed in the manner prescribed, then the judicial body considering applications regarding the child shall appoint an advocate.

71. When a judicial body orders a child placed elsewhere than in the natural family, that order must be reviewed by that judicial body at least every year until such time as that child has returned to the family home or reached the age of majority.

72. Every child who is removed from his or her family home shall be considered a child with special needs, and resources must be made available to assist the child in coping with this change.

Placement of Children

73. All members of the extended family of a child coming into care shall be considered approved foster facilities, unless reasons exist to believe that the child will continue to be in need of protection when placed in their care.

74. In determining the placement of a child in care, the views of the parent shall be heard and given weight.

75. When a judicial body is considering an application by an appropriate authority to place a child in care, that body must demonstrate that, where appropriate, resources were made available to the child and family to prevent the need for the child being placed in care.

76. Where a decision is made to place a child in care, resources must be made available to the child and family to assist both in facilitating a plan of reunification.

77. All reports to court must be made available to all parties in a timely manner.

78. When judicial bodies are considering applications to place an Aboriginal child in care or continue to maintain an Aboriginal child in care, before determining the placement of a child the judicial body shall make its decision solely on the basis of whether the child is, or continues to be, "in need of protection".

79. All legislation must be removed that would allow a judicial body to place a child permanently outside the care of his or her extended family.

80. The *Adoption Act* must be amended to eliminate all possibilities of a child being denied knowledge of his or her identity, and the identity and whereabouts of his or her extended family.

81. In the event that an Aboriginal child is removed from the home of his or her natural parents and placed in another home within the Nation, it must be possible to extend the order of temporary care of the child for as long as is necessary for the natural parents to resolve the problem which resulted in the removal of the child. Such extensions shall be in increments of no longer than one year.

82. Provincial legislation must recognize Aboriginal custom adoptions involving Aboriginal children and an adopting Aboriginal family.

83. Legislation must recognize no other forms of adoption of an Aboriginal child other than custom or open adoption by an Aboriginal family.

84. Legislation must provide for the voluntary placement of children in care of the Superintendent for as long as it takes for the family to resolve the problems that it is facing.

85. In the event that a parent or guardian voluntarily consents to his or her child being placed in an alternative home in the care of the Superintendent, or through adoption, and that alternative home or home of the adoptive parents is unable to provide for the care and custody of that child, the consent agreement signed by the parent or guardian shall be considered void and the child shall be returned to the parent or guardian.

86. With respect to Aboriginal children, adoption records must be made available to the body generally considered as representing the child's Nation or community and that body must be empowered to determine the best course of action to assist that child in re-establishing his or her identity.

Family Violence and Abuse of Children

87. When decisions are being made by judicial bodies concerning the custody of children, the traditional matrilineal and clan structures of Aboriginal Nations and communities, where applicable, shall be considered a factor.

88. In instances in which violence by an estranged husband against his estranged wife has been a factor in their relationship, the physical well-being and safety of the estranged wife shall take precedence over the father's right of access to any of the children.

89. In the event that a child is conceived as a result of involuntary intercourse, the father of that child shall have no rights to access or custody of the child; however, he may be held financially responsible for the cost of maintaining the child.

90. Each Aboriginal Nation or community shall be provided with the resources necessary to create a safe haven for women and children who are the victims of family abuse. Decisions regarding the location and administration of those safe havens shall rest with the women of that Nation or community.

91. In instances that would endanger the physical well-being of a woman or her child, requirement to pursue maintenance from her estranged spouse as a condition of eligibility for other financial resources or services to which they might otherwise be entitled must not compromise the anonymity of her present whereabouts.

92. Aboriginal Nations and communities must have the resources to address the problems that result from disclosures of sexual abuse.

93. If a child victim of sexual abuse is of age to form a valid opinion, and the expression of that opinion will not negatively affect the victim, the views of the victim must be considered in whether criminal charges are laid and on sentencing.

94. If the victim is not of age to form a valid opinion or if the expression of that opinion will negatively affect the victim, then the views of the parents of the victim must be considered in whether criminal charges are laid and on sentencing. In the event that one of the parents is the offender, then the views of the parents of the non-offending parent, if available, must be considered.

95. The videotaped disclosure of a child victim of sexual abuse should be admissible as evidence in a child sexual abuse trial.

96. Healing resources must be available to victims of sexual abuse and to other members of their families, regardless of the effects of such treatment on subsequent evidence that might be required in a sexual abuse trial.

97. For first-time convictions of sexual abuse, courts must be in a position to offer the offender extensive treatment as an alternative to long-term incarceration, after considering the views of the victim as recommended in this report.

98. The voluntary disclosure of sexual abuse by the offender for the purpose of obtaining treatment shall not be used as evidence against the offender in the same manner that witnesses are protected from self-incrimination under the *Canada Evidence Act.*

99. Culturally appropriate treatment must be available on demand to all sexual offenders, whether they have been convicted or not.

100. Adolescent victims of child abuse must not be criminalized for acting out sexual behaviour unless that behaviour is accompanied by other criminal behaviour such as sexual assault. Culturally appropriate treatment must be provided to these children.

101. Unless the publication of the name of a sexual abuser of children presents a real problem to the well-being of the victim of that offender, the convicted offender's name may be published.

102. Known sexual abusers of children must be denied positions that would give them unsupervised access to children.

Appendix 2: List of Participants in Consultation Meetings

Appendix 2:
List of Participants in Consultation Meetings

- Adams, Loretta
- Adams, Warner
- Adams, Jerry
- Ahenakew, Karen
- Aleck, Kate
- Alfred, Chief Patrick
- Alfred, Pearl
- Allgaier, Lisa
- Ambrose, Denise
- Anaquod, Tom I.
- Apsassin, Lillian
- Archie, Antoine D.
- Baker, Richard T.
- Ball, Bernice
- Barney, Geraldine
- Beattie, Joyce
- Beggs, Frances
- Bell, Johnson
- Best, Bonnie
- Betty, Mavis
- Betty, Robert
- Bevan, Susan
- Billy, Mary Jane
- Blakeborough, Sharon
- Bob, Sharon
- Bobb, Wayne
- Bolan, Shirley
- Boston, Mary
- Bracic, Violet
- Braker, Hugh
- Brock, Dallas
- Brooks, Betty
- Brown, Frank
- Brown, Jeff
- Brown, Wilson R.
- Brown, Diane
- Brown, Susan
- Brown, Roberta
- Brown, Sylvia
- Brown, Terry
- Brown, Barbara
- Bruce, Don
- Buchan, Alice
- Byford, Jim
- Calliou, Cliff
- Calliou, Margaret
- Campbell, Margaret
- Campbell, Dennis
- Capot-Blanc, Ms. Rose
- Cardinel, Ben
- Carlick, Alice
- Carpenter, Cyril
- Carpenter, Jennifer
- Chan, Cathy
- Charlelois, John
- Charles, Maggie
- Charles, Bernard
- Charleyboy, Joan
- Charlie, Morris
- Charlie, Peter & Lois
- Chaxton, Calvin
- Child, Susan
- Choumost, Erma
- Chromko, Brian
- Clancy, Paddy
- Clayton, Julia
- Clearsky, Wilma
- Clearsky, Crystal
- Clellamin, Tina
- Clement, Vic
- Clement, Ken
- Coklough, Georgia
- Collins, Geri
- Cooley, Constable James
- Corrigal, Wendy
- Cross, Nellie
- Cullam, Tina
- Czink, Marika
- Dan, Sandra
- Dault, Anne
- Davidson, Sidney
- Dawes, Bonnie
- Dawson, Patricia
- Dawson, Carole
- Demerais, Lou
- Dennis, Robert
- Dick, Mary
- Dionne, Richard A.
- Douse, Pat
- Duncan, Grace
- Earl, Judy
- Edmonds, Bruce
- Edmonds, Vera
- Edwards, Gord
- Edwards, Daisy
- Edwards, Gora
- Edzerza, Patrick
- Ewachewski, Teresa
- Ewachuh, Dennis
- Fayant, Randy
- Felix, Donna
- Fenton, Matilda
- Ferneyhough, Sheila
- Fisher, Tony
- Fitzgerald, Karen
- Flamond, Leslie
- Fletcher, Adele
- Fournier, Suzanne
- Foxcroft, Debbie
- Francis, Roy
- Franz, Gertie
- Friedland, Bob
- Gaspard, Alene
- Gellerman, Pat
- George, Deanna
- George, Ed
- Ghostkeeper, Mary
- Ghostkeeper, Daryl
- Gilrouse, Shelley
- Girbac, Jennifer
- Gladstone-Davies, Ruth
- Gottfriedson, Mary
- Grace, Lorna
- Grant, Trudi
- Gray, Viola
- Gray, Roger L.
- Green, Norma
- Green, Ray
- Green, Loretta
- Green, Mary
- Greene, Astrid
- Griffith, Faye
- Guss, Chief Lois
- Hacett, Florence
- Haiyupis, Fidelia
- Haiyupis, R.
- Hall, Darlene
- Hall, Shirl
- Hall, Madeline
- Hall, Marlene
- Hall, K.
- Hanes, Edward
- Hanuse, Clifford
- Harris, Rhoda S.
- Harris, Pearl
- Harris, Daniella
- Harry, Aggie
- Harry, Ken R.
- Hebert, Leo
- Henry, Mavis
- Hewitt, Mary
- Hill, Donna
- Hill, Daisy

- Hopkins, Dora
- Housty, Ann
- Hughes, Deanna
- Huisman, Ruby
- Hull, Karen
- Humchitt, Wilfred
- Hunt, Sherry
- Hunt, Pearl
- Hunt, Davina
- Hunt, Marion
- Hunt, Rita
- Hunt-Peeber, Christine
- Ifovanowich, Ada
- Innes, Esther
- Ironchild, John W.
- Isaac, June
- Isbister, Lucille
- Jack, Anita
- Jack, Charlene
- Jack, Percy
- Jack, Verna R.
- Jacobs, Chief Frederick A.
- Jacobs, Lena
- James, Verna
- James, Cecilia
- James, Lola
- James, Marilyn
- Jimmy, Mary
- Joe, Cherry
- Johnson, Max
- Johnson, Willard
- Johnson, Beverly
- Jones, Alanna
- Jones, Andrea
- Jones, Darrell
- Joseph, Yvonne
- Kaweesi, Connie
- Keiner, Verna
- Kerr, Judith
- Kirk, Jim
- Klassen, Ernst
- Kline, Marlee
- Koldeweihe, Kay
- Kozey, Stephen
- L'Hirondelle, Joseph
- LaBoucane, Arlene
- Lafferty, Eileen
- Lainsbury, Gerry
- Lalonde, Tom
- Lambert, Dolores
- Lanaro, Madeline
- Lavallee, Phyllis
- Leighton, Leanne
- Leonard, Connie
- Letendre, Cecile
- Little, Tom
- Louie, Chief Gene
- Louie, Mabel
- Louie, Rita
- Louie, Chief L.
- Louis, Pam
- Lucas, Linus
- Lucas, Richard
- Ludeman, Dan
- Luggi, Stan
- Lulua, Dinah C.
- Lundquist, Audrey
- Lutz, Sherri
- MacGregor, Lorne
- Machell, Lorraine
- Mack, Joe
- Mamele Benevolent Society
- Manitopyes, Joe
- Mante, Robert
- Manuel, Vicki
- Manuel, Dineen
- Marshall, Claire
- Mason, Allan
- Matsune, Ken
- McCoy, Agnes
- McDonald, Laurie
- McDonald, Harriet
- McDonald, John
- McDougall, Diane
- McDougall, Geri
- McGinnis, Veronica
- McRae, Darlene
- McRae, Marjorie
- Mewma, Edwin
- Michel, R. Leo
- Michel, Ms. Florence
- Miller, Allan
- Miller, George
- Miller, Marilyn
- Miller, Susan
- Mitchell, J.
- Mitchell, Lorraine
- Moon, John
- Moon, Yvonne
- Moore, Renata
- Morals, Kerry Lee
- Moses, Anna
- Mosher, Patti
- Mowatt, Val
- Mundy, Vi
- Murphy, Constable S.T.
- Nahanee, Harriet
- Nahanee, Valerie
- Nelson, Norma
- Nelson, Forrest
- Nelson, Jubert
- Ness, Peggy
- Nissen, Larry
- Nole, Annabel
- Nolin, Leo
- Norby, Marilyn
- North, Patricia B.
- Nutley, Judy
- Olito, Mary
- Olson, Stephen
- Park, Susan
- Page, Diane
- PaPeQuash, M. Evelyn
- Parenteau, Stan
- Pascal, Muriel
- Patrick, Betty
- Patterson, Jacquie
- Paul, Constable F.L.
- Paul, Elsie
- Paul, Charles E.
- Paul, Art
- Paul, Jason
- Paul, Jean
- Paul, Arthur
- Peers, Andy Sr.
- Pelegrin, Cecelia
- Pelegrin, Dean
- Peters, Russell
- Peters, Bobbie
- Peters, Hazel
- Peters, Bobbi
- Phillips, Raymond
- Pierce, Carole
- Pierre, Annabelle
- Plante, Rosemarie
- Pootlass, Lawrence
- Pootlass, Rick
- Prevost, Wanda P.
- Prince, Fran
- Prince, Violet
- Pyke, Gale
- Quatell, Loran
- Rayant, Randy
- Raynes, Flora
- Reid, Arnold
- Reiter, Shirley
- Renz, Jannette
- Rice, Bill
- Richardson, Richard
- Richardson, M.
- Ridley, Lila
- Ritchie, Priscilla
- Rivers, Frank
- Roach, Donna
- Roberts, Mildred
- Robinson, Crystal
- Rochichaud, Barb
- Ross, David R.
- Russ, Dorothy
- Sam, Alice

- Sampson, Debbie
- Sampson, Marlene
- Sandberg, William
- Saul, E.
- Saul, Eva
- Saunders, Andrene
- Saunders, Eliza
- Saunders, Lyne
- Savino, Christine
- Schmidt, Sheila
- Schneider, Sophia
- Schur, Constable S.M.
- Scotchman, Shawn
- Sellars, Sandra
- Seymour, Sandra
- Shackelly, Darlene
- Shank, Judy
- Shannon, Thelma
- Shanosc, Marg
- Shattanana, Chief Josephine
- Shaw, Ruth
- Shawana, Perry
- Shintah, Delores
- Simon, Bill
- Simpson, Norah
- Smiley, James
- Smith, Dennis G.
- Smith, Earl J.
- Snow, Agnes
- Snow, Laverne
- Soop, Patricia
- Spence, Bernadette
- Squinas, Lana
- Squires, Maurice
- Stanley, Maryanne
- Steinke, Ms. Joey
- Stewart, Agnes
- Sullivan, Charlotte
- Svanvik, Peggy
- Taillefer, M.
- Tallio, Bill
- Tallio, Debbie
- Tallio, Connie
- Tallio, Glenn
- Taylor, Les
- Taylor, Brenda
- Thibodeau, Fred
- Thoen, Darlene
- Thomas, Marie
- Thomas, Viola
- Thompson, Shirley
- Thompson, Paul
- Thompson, Nora
- Thomsen, L.
- Tokarski, Sarah
- Tookata, Norman
- Townend, Alexander
- Uppal, Manjeet
- Vandelarr, Cheryl
- Verigen, Beatrice
- Vickers, Don
- Vickers, Mary
- Walker, Jack
- Walkus, Horace
- Walkus, Mary
- Wallace, Shirley
- Wallace, Peter
- Warman, Cheryl
- Waterfall, Pauline
- Watt, Melanie R.
- Webber, Frank
- Wesley, Brenda
- Whelton, Erma
- White, Toni
- Whitehead, Debbie
- Whiteman, Alice
- Wiebe, Brenda
- Williams, Cheryl
- Williams, Leonard
- Williams, Margaret
- Williams, Chief Cindy
- Williams, Ruth
- Williams, Warner
- Wilson, Doug
- Wilson, Tony
- Wilson, Ron Jr.
- Wilson, Hazel M.
- Wilson, Audrey
- Wilson, Mary Ann
- Wilson, Dora
- Wilson, G.
- Wilson, Muriel
- Wilson, Steven C.
- Wood, Dorothy
- Woods, Walter
- Woods, Audrey E.
- Workman, Memory Gale
- Zenter, Constable Franklin

Appendix 3:
Written Submissions

Appendix 3:
Written Submissions

- Carrier Chilcotin Tribal Council
- Coldwater Indian Band
- Cowichan Band Council
- First Nations Family and Child Care Workers Society
- Gitanmaax Health and Child Care Committee
- Gitwinksihlkw Band Council
- Gwa'Sala-'Nakwaxda'xw Council
- Hazelton Child and Youth Committee
- Heiltsuk Band Council
- Hey-way'-noqu' Healing Circle for Addictions Society
- Indian Homemakers' Association of B.C.
- Interior Indian Friendship Society
- Iskut Band Council
- Kamloops Indian Band
- Kitamaat Band Council
- Kitselas Band Council
- Kitsumkalum Band
- Ktunaxa/Kinbasket Tribal Council
- Kwakiutl District Council
- L'ax Ghels Community Law Centre Society
- Louis Riel Metis Association
- Metis Council of Port Alberni
- Nadleh Whut'en Band and Stoney Creek Band
- Native Courtworkers and Counselling Association of British Columbia
- Nicola Valley Tribal Council
- Nimpkish Health Centre
- Northern Native Family Services
- Northwest Band Social Workers Association
- Okanagan Indian Band
- Pacific Metis Federation
- Pauquachin Band
- Penticton Indian Band
- Saanich Adult Education Centre
- Saanich Indian School Board
- St. Mary's Indian Band
- Skidegate Band
- Spallumcheen Family Services
- Shackan-Nooaitch Administration
- Songhees Indian Band
- Squamish Nation Council
- Usma Nuu-chah-nulth Family and Child Services

Appendix 4:
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Message from Chief Seattle

Message from Chief Seattle

In 1854, Chief Seattle, leader of the Suquainish Tribe, delivered this prophetic speech to mark the transferral of ancestral Indian lands to the Federal Government.

The Great Chief in Washington sends word that he wishes to buy our land.

The Great Chief also sends word of friendship and good will. This is kind of him, since we know he has little need of our friendship in return. But we will still consider his offer. For we know that if we do not sell, the white man may come with guns and take our land.

How can you buy or sell the sky, the warmth of the land? The idea is strange to us. If we do not own the freshness of the air and the sparkle of the water, how can you buy them?

Every part of this earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing, and all humming insects, are holy in the memory and experiences of my people. The sap which courses through the trees carries the memories of the red man.

The white man's dead forget the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters: the deer, the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man — all belong to the same family.

So, the Great Chief sends word he will reserve a place so that we can live comfortably to ourselves. He will be our father and we will be his children.

So, we will consider his offer to buy our land. But it will not be easy. For this land is sacred to us.

This shining water that moves in the streams and rivers is not just water, but the blood of our ancestors. If we sell you our land you must remember that it is sacred, and that each ghostly reflection in the clear water of the lake tells of events and memories in the life of my people. The water's murmurs, the voice of my father's father. The rivers are our brothers, they quench our thirst. The rivers carry our canoes, and feed our children. If we sell you our land, you must remember, and teach your children, that the rivers are our brothers, and yours, and you must henceforth give the rivers the kindness you would give your brother.

The red man has always retreated before the advancing white man, as the mist of the mountain runs before the morning sun. But the ashes of our fathers are sacred. Their graves are holy ground, and so these hills, these trees, this portion of the earth is consecrated to us. We know that the white man does not understand our ways. One portion of land is the same to him as the next, for he is a stranger who comes in the night and takes from the land, whatever he needs. The earth is not his brother, but his enemy, and when he has conquered it, he moves on. He leaves his father's graves behind, and he does not care. His father's graves, and his children's birthright are forgotten. He treats his mother, "the earth" and his brother, "the sky" as things to be bought, plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert.

I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and does not understand.

There is no quiet place in the white man's cities. No place to hear the unfurling of the leaves in spring or the rustle of insects' wings. But perhaps it is because I am a savage and do not understand. The clatter only seems to insult the ears. And what is there to like if a man cannot hear the lonely cry of the loon, or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the smell of the wind itself, cleansed by a midday rain, or scented with the sweet smell of cedar.

The air is precious to the red man, for all things share the same breath - the beast, the tree, the man, they all share the same breath. The white man does not seem to notice the air he breathes. Like a man dying for many days, he is numb to the stench. But if we sell you our land, you must remember that the air is precious to us, that the air shares its spirit with all the life it supports. The wind that gave our grandfather his first breath, also receives his last sigh. And the wind must also give our children the spirit of life. And if we sell you our land, you must keep it apart and sacred, as a place where even the white man can go to taste the wind that is sweetened by the meadow's flowers.

We will consider your offer to buy our land. If we decide to accept, I will make one condition: The white man must treat the beasts of this land as his brothers.

I am a savage, and do not understand any other way. I have seen thousands of rotting buffaloes on the prairie, left by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive. What is man without beasts? If all the beasts were gone, men would die from a great loneliness of spirit. For whatever happens to the beasts, soon happens to man. ALL THINGS ARE CONNECTED.

You must teach your children that the ground beneath their feet is the ashes of our grandfathers. So that they will respect the land, tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children, that the earth is our mother. WHATEVER BEFALLS THE EARTH, BEFALLS THE SONS OF THE EARTH. IF MEN SPIT UPON THE GROUND, THEY SPIT UPON THEMSELVES.

THIS WE KNOW; The earth does not belong to man; man belongs to the earth.

THIS WE KNOW; All things are connected like the blood which unites one family. ALL THINGS ARE CONNECTED.

Whatever befalls the earth befalls the sons of the earth. Man didn't weave the web of life; he is merely a strand in it. Whatever he does to the web; he does to himself.

But we will consider his offer, to go to the reservation he gave for our people. We will live apart, and in peace. It matters little where we spend the rest of our days. Our children have seen their fathers humbled in defeat. Our warriors have felt shame, and after defeat they turn their days in idleness and contaminate their bodies with sweet foods and strong drink. It matters little where we spend the rest of our days. There are not many. A few more hours, a few more winters, and none of the children of the great tribes that once lived on this earth or that roam now in small bands, in the woods, will be left to mourn the graves of a people once as powerful and hopeful as yours. But why should I mourn the passing of my people? Tribes are made of men, nothing more. Men come and go like the waves of the sea.

Even the white man, whose God walks and talks with him as friend to friend, cannot be exempt from the common destiny. We may be brothers after all; we shall see. One thing we know, which the white man may one day discover—OUR GOD IS THE SAME GOD. You may think now that you own him as you wish to own our land; but you cannot. He is the God of all man, and his compassion is equal for the red and the white. This earth is precious to him, and to harm the earth is to heap contempt on its creator. The white too shall pass; perhaps sooner than all other tribes. If they continue to contaminate their beds, they will one night suffocate in their own waste. But in their perishing they will shine brightly, fired by the strength of the God who brought them to this land, and for some special purpose gave them dominion over this land and over the red man. That destiny is a mystery to us, for we do not understand when the buffalo are all slaughtered, the wild horses are tamed, the secret corners of the forest heavy with the scent of many men, and the view of the ripe hills blotted by the talking wires. Where is the thicket? GONE. Where is the eagle? GONE. And what is it to say goodbye to the swift pony and the hunt? THE END OF LIVING AND THE BEGINNING OF SURVIVAL.

So we will consider your offer to buy our land. If we agree, it will be to secure the reservation you have promised. There, perhaps, we may live out our brief days as we wish. When the last red man has vanished from this earth, and his memory is only the shadow of a cloud moving across the prairie, these shores and forests will still hold the spirits of my people. For they love this earth as the newborn loves its mother's heartbeat. So if we sell you our land, love it as we've loved it. Care for it as we've cared for it. Hold in your mind the memory of the land as it is when you take it. And with all your strength, with all your mind, with all your heart, preserve it for your children, and love it ... AS GOD LOVES US ALL.

One thing we know. Our God is the same God. This earth is precious to him. Even the white man cannot be exempt from the common destiny. We may be brothers after all. We shall see.